

IN THE SENATE OF THE UNITED STATES.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,
TRANSMITTING,

In reply to the resolution of the Senate of January 23, 1893, official correspondence of the Government of the United States and China, relating to the acts of Congress forbidding immigration of Chinese and the treaty stipulations between the two countries.

FEBRUARY 6, 1893.—Read in executive session and referred to the Committee on Foreign Relations.

FEBRUARY 8, 1893.—Ordered to be printed and recommitted to the Committee on Foreign Relations.

To the Senate of the United States:

I transmit herewith a report of the Secretary of State on the subject of the official correspondence of the Government of China with the United States relating to the acts of Congress forbidding immigration of Chinese and the treaty stipulations between the two countries, which was called for by the resolution of the Senate dated January 23, 1893.

BENJ. HARRISON.

EXECUTIVE MANSION,
Washington, February 3, 1893.

DEPARTMENT OF STATE,
Washington, February 3, 1893.

The PRESIDENT:

The Secretary of State, in pursuance of the resolution of the Senate of January 23 last, directing him to send to the Senate, if not incompatible with the public interest, the official correspondence of the Government of China with the United States relating to the acts of Congress forbidding immigration of Chinese and the treaty stipulations between the two countries, has the honor to inclose herewith all the correspondence bearing on the subject under consideration subsequent to that submitted in Secretary of State Blaine's report, dated January 27, 1890.

Respectfully submitted.

JOHN W. FOSTER.

List of papers.

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1. Mr. Tsui to Mr. Blaine, March 26, 1890.
2. Mr. Denby to Mr. Blaine, July 25, 1890.
3. Mr. Tsui to Mr. Blaine, October 1, 1890.
4. Mr. Blaine to Mr. Tsui, October 6, 1890.
5. Mr. Denby to Mr. Blaine, October 22, 1890.
6. Mr. Tsui to Mr. Blaine, December 4, 1890.
7. Same to same, March 22, 1892.
8. Same to same, April 12, 1892.
9. Same to same, April 21, 1892.
10. Same to same, May 5, 1892.
11. Mr. Denby to Mr. Blaine, June 17, 1892.
12. Same to same, June 20, 1892.
13. Same to same, July 5, 1892.
14. Mr. Denby to Mr. Foster, August 18, 1892.
15. Mr. Tsui to Mr. Foster, November 7, 1892.
16. Same to same, November 11, 1892.
17. Mr. Denby to Mr. Foster, November 29, 1892.
18. Mr. Wharton to Mr. Tsui, December 10, 1892.

No. 1.

Mr. Tsui to Mr. Blaine.

CHINESE LEGATION,
Washington, March 26, 1890. (Received March 28.)

SIR: Under date of the 26th of January, 1889, my predecessor submitted some considerations to your Department upon the act of your Congress of October 1, 1888. Mr. Secretary Bayard, on the 2d of February, 1889, referred to that note as containing "highly important matters" and promised to "make more extended reply" thereto. But nearly six months having passed without a reply being received, and in view of the advent meanwhile of a new administration of your nation, my Government deeming it important that the subject be freshly brought to your attention, my predecessor, under date of July 8, 1889, submitted to you further considerations, which, it was hoped, would bring about some change in the legislative and executive attitude of the American Government. The receipt of that note was courteously acknowledged on the 15th of the same month, and the assurance given that the subject would "receive the very careful and prompt attention of the Department."

I have waited patiently upon the strength of this assurance for the past eight months, and should not now break silence on the subject if I could do so with a proper regard for the instructions of my Government and for the condition of my unfortunate countrymen, whose rights and interests are so sorely vexed by this legislation of your Congress and by the resulting action of the executive department. When it is borne in mind that a year and a half has passed since your Congress and President united in a measure which (as the Supreme Court decided) compelled the authorities to disregard and trample upon solemn treaty stipulations, and during which time not only the measure itself has been most rigidly enforced, but to its severities have been added by executive action new restrictions upon Chinese subjects in the United States, it certainly will not surprise you if I communicate to you the earnest and anxious desire of the Imperial Government that I should obtain

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from you some expression of the views and intentions of your Government on this important subject.

In order that I may enlist your sympathy with the desire of my Government, and that you may be persuaded of the reasonableness of it, I beg that you will indulge me while I state some of the effects of the act of October 1, 1888, and of the resulting policy of the Treasury Department. Although the treaty of 1880 stipulated that Chinese laborers then in the United States should "be allowed to go and come of their own free will and accord," and should have the same treatment as other foreigners, they conformed to the exceptional provision of a law which required them, on departure for temporary visits to their native land, to take a certificate from the customs authorities at the port of departure, descriptive of their person, and which contained a statement that the person to whom it was issued was "entitled * * * to return and reenter the United States." The official statistics show that at the time the act of 1888 went into effect there were outstanding at the single port of San Francisco over twenty thousand of these certificates. At that very time there were about six hundred of the holders of these certificates who were on the high seas en route for San Francisco, and who had no notice or means of knowledge of the passage of the act till they reached that port; and yet the supreme tribunal of your country has decided that it was the duty of the authorities of the port of San Francisco, under the act, to dishonor their own certificates and turn these poor laborers back from its shores out upon the broad ocean and force them to seek a more hospitable haven elsewhere.

The tens of thousands of Chinese subjects who temporarily left the shores of the United States, armed with the signed and sealed assurance of this Government of their right to return, and relying upon its good faith, in almost every case left behind them in this country property, business, families, relatives, obligations, or contracts, which have been imperiled, broken up, or in some shape injuriously affected by their unexpected and unwarranted exclusion. The vast number of Chinese laborers who were in the United States at the time of the passage of the act of 1888 had come here under the guaranty of solemn treaty stipulations, which allowed them "to go and come of their own free will and accord" and on the solemn assurance that they would be maintained in this privilege against "legislative enactment;" and under this act, if they should visit their native land, drawn thither by the ties of family, patriotism, or business, they must sacrifice and abandon all their interests and property in the United States; they must choose between a complete breaking up of long-established business relations here, and a perpetual banishment from their native land by a continuous residence in this country.

The foregoing shows that there are three classes of Chinese laborers whose treaty rights have been grievously impaired in different ways by the operation of the act of 1888, to wit, those who were on the ocean, those who were abroad holding return certificates, and those who were in the United States at the time the act was passed. But there are two other classes of Chinese subjects whose treaty rights have been abrogated or impaired since that act was passed, not by the direct application of its provisions, but, I am sorry to say, by new restrictions and regulations of the executive department of your Government. In my notes of November 5 and December 16 last I have shown you how the transit of Chinese laborers through the United States has been obstructed and in great measure cut off since October, 1888, notwithstanding the law officers of your Government acknowledge that there has

been no legislation of your Congress, either in 1882, in 1884, or in 1888, which in the slightest degree affects the treaty rights on this subject. It has been serious enough when the Imperial Government beheld the manifest intention of your Congress in the years named to obstruct and finally abrogate the treaties existing between the two nations; but it regards with real alarm the apparent disposition of the Treasury Department to go even beyond the enactments of Congress in the same direction. In addition to the stoppage or obstruction of transit, the Chinese merchants who have been established in the United States, as well as those in China or in foreign nations who have trade relations with this country, have encountered much harsher treatment and increasing embarrassment during the past year and a half from the customs authorities, and it has become much more difficult than formerly for them to carry on commerce in and with the United States.

Such, Mr. Secretary, are some of the losses, injuries, and hardships which have been and are being suffered by my countrymen as the direct and indirect effects of the passage of the act of 1888, and which, I trust, will more fully explain to you the anxious desire of my Government to receive from you some expression of the views and intentions of your Government on the important subjects communicated in the cited notes of this legation. But I must ask your indulgence while I attempt, as briefly as I can, to show you the reverse side of this question, to wit, how the American Government expects and demands the treaties to be observed in China, and how, in fact, the Imperial Government does observe and enforce them. And for this purpose I confine myself to the past two years, within which the most objectionable legislation and restrictions have been adopted in the United States.

The two classes of American interests represented in China are, first, the missionaries and their propaganda, and, second, the merchants and their commerce. I need not cite facts to show one so intelligent in the world's affairs as you that the most fruitful source of trouble and embarrassment for China in its relations with the treaty powers has been the presence in my country of the missionaries. In substantiation of this, your own worthy minister quotes to your predecessor the language of Prince Kung in these words:

The missionary question affects the whole question of peaceful relations with foreign powers * * * * the whole question of their trade. (Foreign Relations, 1887, p. 197.)

But, notwithstanding the prejudices of our common people and the embarrassments which constantly surround the authorities, the whole power of the Government has at all times been exercised to protect the lives and property of this disturbing class of foreigners. So far as I can remember, not a single American missionary has lost his life, none of their treaty guaranties have been violated with either the consent or connivance of the Government, and every dollar of loss which they have sustained from violence brought about through either their own imprudence or the sudden outbursts of the populace has been reimbursed to them by the Government. And this has not only been true as to the past two years, but through every year since the first treaty between the two nations was signed, in 1844. I need not point out how marked has been the contrast in this respect of the treatment of Chinese residents in the United States. And it is to be noted that in the defense of the claims of the missionaries the American minister and his Government have not been content with requiring a strict observance of treaty stipulations, but have gone beyond them and demanded

protection and indemnity in cases where they admit that the terms of the treaties do not justify such demands.

It has been continuously admitted that "the true construction of the treaties" does not secure to the missionaries the right of permanent residence or ownership of real estate in the interior of China; and yet, because the local authorities have tolerated their residences in isolated cases, it is insisted that the American missionary thereby "acquires vested rights, which his own Government and the Imperial Government also are bound to secure to him if attacked." (Foreign Relations, 1888, Vol. I, pp. 220, 271.) And we find that the American minister at Peking has in the past two years been very zealous in demanding the protection of missionaries, reimbursement of their losses, and reinstatement on their lands in cases where it is admitted that the terms of the treaties do not sustain such demands, his position being that though "the United States could not, as a matter of treaty stipulation, insist" upon such treatment being awarded to American missionaries, yet where residence and ownership of land are "accorded to citizens or subjects of other foreign powers under the favored-nation clause, exact equality should be insisted upon." And the minister might well take such an advanced position, when it appears that he has been instructed by his chief to obtain for his countrymen "no less measure of privilege than is granted by treaty, conferred by favor, or procured through use and custom for the missionaries of any other nation or creed."

And this broad doctrine is advocated and insisted upon by the Secretary of State at a time when the Congress, the Executive, and the Supreme Court of his country are setting it at defiance in cases where its application is invoked in behalf of Chinese residents in the United States. Your immediate predecessor even uses the freedom extended by China to foreigners in its treaties as an argument for the enlarged demands of the minister in these words:

When China was opened by treaties with foreign powers to the entrance and residence of foreigners, it was inevitable that the restricted limits of residence and business prescribed in these treaties should be extended. (Foreign Relations, 1888, pp. 266, 272, 301, 325.)

It would seem natural to presume that the "inevitable" effect which the Secretary here notes was the logical and customary experience among western nations concerning treaty concessions and privileges. But, unfortunately, China is compelled to look elsewhere than to the United States for a realization of the experience so forcibly and unequivocally assumed by this eminent authority. In 1868 the United States, for the first time, by treaty guarantees, opened its territory to the entrance and residence of Chinese upon the same terms as were extended to the subjects of the most favored nation. But the "inevitable" result of such an act, as announced by the American Secretary of State, was not realized in this country. So far from the privileges of "residence and business prescribed in the treaty" being "extended," they have been steadily and persistently restricted; first, by peaceful treaty negotiations in 1880; then by hostile legislation in 1882 and 1884; and, finally, by positive abrogation by Congress in 1888, approved by the Executive and sanctioned by the Supreme Court.

But, notwithstanding this contrary treatment of the Chinese in the United States, the Imperial Government has steadily and uniformly recognized and enforced, not only its plain treaty stipulations respecting this disturbing element introduced into its territory, but, in its desire to deal justly and pursue friendly relations with America, it has gone beyond the treaties and yielded to the foregoing extreme and

illogical demands of your Government. And I am gratified to know that this spirit of conciliation has been recognized by the honorable Secretary of State in the following words:

Experience shows that by a moderate amount of conciliation and good will the rights of foreigners will be gradually extended and interpreted by the Chinese in a more liberal spirit and beyond the limits of the treaty ports. (Foreign Relations, 1888, p. 310.)

Let us now turn for a few moments to the position of the American Government in respect to the rights of its merchants and commerce in China and the treatment they receive from the authorities there. It is natural that the American Government should take a deep interest in this trade because of its extent and importance. Mr. Denby, in a dispatch dated July 14, 1888, reports on the foreign trade of China that the exports and the imports from the United States stand second in volume, or next to those of Great Britain. Yet in the past two years or more I am not aware of any specific complaint of injustice or hardship suffered by a single American merchant in China, or any allegation of different treatment extended to them than to all other foreign merchants. The only question of trade which has arisen between the two Governments has been on the importation and regulation of trade in kerosene. Owing to its explosive character, many lives have been lost and much property destroyed in China, and certain of the provincial authorities have urged upon the Imperial Government the restriction of its importation by governmental control of its sale and by internal taxation; and, in furtherance of these views, one of the viceroys, in memorializing the Throne, referred to the position assumed by the United States in the exclusion of Chinese immigration, and said:

If they can prohibit our going there because Chinese labor is injurious to their interests, we have an equal right to prohibit the importation of kerosene when it is injurious to us.

But Minister Denby, usually so intelligent respecting Chinese matters, is oblivious to the force of this argument and transmits it to Washington, with the criticism that it is a "stupid memorial." He follows it up with an earnest protest against the right of China to levy an internal discriminating tax upon kerosene after it has left the foreign merchant and passed into the interior, notwithstanding he admits that it is and long has been the law and practice of China that "once foreign goods have entered China and become the property of Chinese merchants, their taxation is a matter wholly and solely within the direction of China," and notwithstanding he shows that the Supreme Court of the United States has recognized substantially the same power of taxation as belonging to the States of your Union. He further claims that such taxation is a violation of the spirit and intent of the treaty, though he does not contend that any specific clause is infringed thereby. He maintains that "the interpretation (of treaties) shall be favorable rather than odious; * * * that the reason of the treaty shall prevail." And in these positions he is supported by the Secretary of State. (Foreign Relations, 1887, pp. 192, 225; 1888, 267, 286.)

If this policy respecting treaties which was urged upon China had been followed in the United States, how different would be the international relations of the two countries to-day. China has welcomed American commerce and placed its merchants upon an equal footing in its ports with those of the most friendly and favored nation, and the only question of difference which has arisen is respecting a matter of internal taxation, in which China follows the same law and practice as is allowed in the United States. Contrast this with the treatment of

Chinese merchants in this country. Although by express treaty stipulation they are in the United States to be "allowed to go and come of their own free will and accord," and are guaranteed the treatment "accorded to the citizens or subjects of the most favored nation," for the past eight years no such treatment has been extended to them. While the merchants of all other nations of the earth are permitted free and unobstructed entrance into and departure from the ports of the United States, the Chinese merchant has by the legislation of your Congress had thrown around him the most obstructive, embarrassing, and humiliating restrictions. He is treated by the customs authorities with much the same surveillance as is extended to vagrants or criminals; and before he is permitted to land he is required to produce a certificate, the strict conditions of which make it difficult and expensive to comply with, and humiliating and objectionable to the man of honor and self-respect, it being necessary to set forth the amount and details of the business in which he is and has been engaged, with a statement of his family history and occupation, and all these matters are subject to the examination and approval of the American consul at the Chinese or foreign port whence he sails.

Only within the present month two of the most respectable Chinese merchants of Hongkong arrived in the port of San Francisco, desiring to land temporarily and visit their customers in the various cities of the Pacific States; but, because they did not bring with them from that foreign port the certificate above described, which it was impossible for them to obtain, they were kept as prisoners on board the vessel upon which they arrived until it sailed on its return voyage, notwithstanding the collector of customs was satisfied they belonged to the exempt class entitled, under the treaty, to the same free entrance as a British or other merchant, and they were driven back upon their long voyage across the Pacific Ocean; a condition of things which your President four years ago recognized as contrary to the treaty and urged your Congress to rectify. (Senate Ex. Doc. 118, Forty-ninth Congress, first session.)

Such, Mr. Secretary, are some of the contrasts in the observance and enforcement of treaty rights between the two nations. Can you wonder that the Imperial Government is growing restive and impatient under such dissimilarity of treatment, and is urging me to obtain from you some satisfactory explanation of the conduct of the American authorities in the past and some assurance of the course to be pursued in the future?

You will observe that the object had in view in the cited note of this legation addressed to your predecessor was to induce the Executive to recommend Congress to undo the wrong and hardships inflicted upon my countrymen by its legislation; and in the subsequent note addressed to you this object was brought to your attention, and the hope was expressed that, with your earnest desire to deal justly and to "maintain the public duty and the public honor," you would find a speedy method of satisfying the reasonable expectations of the Imperial Government. In view of the fact that one session of your Congress has passed and another is already well advanced without any communication from the President, and of your continued silence respecting my notes, I am being reluctantly forced to the conclusion that you regard that method of adjustment as impracticable. It will make me happy to be informed that this conclusion is erroneous, and that your Congress can yet be induced to "maintain the public duty and the public honor."

But if this, unfortunately, may not be, then I can see only one other proper solution, and that the one indicated in the fifth point of my predecessor's note of July 8, 1889. The public law of all nations recognizes the right of China to resort to retaliation for these violated treaty guarantees, and such a course applied to the American missionaries and merchants has been recommended to the Imperial Government by many of its statesmen; but its long-maintained friendship for the United States, and its desire to observe a more humane and elevated standard of intercourse with the nations of the world, point to a better method of adjustment. Conscious that it has religiously kept faith with all its treaty pledges towards your country, my Government is persuaded that America will not be blind to its own obligations nor deaf to the appeals made to it on behalf of the Chinese subjects who have been so grievously injured in their treaty rights by the legislation of Congress.

It is a principle of public law, recognized, I believe, by all international writers, that a treaty between two independent nations is a contract, and that the nation which fails to execute or violates it is responsible to the other for all injuries suffered by its subjects thereby, and that it can not escape responsibility because of the action or failure of action of any internal power or authority in its system of government. But I need not quote any foreign publicists on this subject, because your own country furnishes abundant authority to sustain this position. The great American law writer Wheaton, whose wisdom and justice are recognized throughout all countries, says:

The King (or the President) can not compel the Chambers (or Congress), neither can he compel the courts; but the nation is not the less responsible for the breach of faith thus arising out of the discordant action of the international machinery of its constitution. (Lawrence's Wheaton, p. 359.)

Citation has already been made of the declarations of the Solicitor of your own Department to the same effect in even stronger language. And it seems that the distinguished statesmen who have preceded you in your great office have held the same just principle. I need only quote the words of Mr. Secretary Fish :

The foreign nation whose rights are invaded thereby [by legislation of Congress] has no less cause of complaint and no less right to decline to recognize any internal legislation which presumes to limit or curtail rights accorded by treaty. (Wharton, section 138.)

But the Supreme Court of your country, in the decision in which it sustained the act of 1888, has been very explicit in recognizing this principle. It declares that "a treaty * * * is in its nature a contract between nations," and that "it must be conceded that the act of 1888 is in contravention of express stipulations of the treaty of 1868 and of the supplemental treaty of 1880," and, although the act of Congress is binding upon the internal authorities, that act does not justify complaint on the part of the other contracting party. And this doctrine is made more clear by the learned American judges whose opinions are cited approvingly by the Supreme Court. Mr. Justice Curtis says:

The sovereign between whom and the United States a treaty has been made has a right to expect its stipulations to be kept with scrupulous good faith. (2 Curtis, C. C., 456.)

And again he says:

The responsibility of the Government to a foreign nation for the exercise of these powers (by legislation) * * * is to be met and justified to the foreign nation according to the requirements of the rules of public law. (19 Howard, 629.)

And the Supreme Court has held:

A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If this fails, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress. (112 U. S. R., 598.)

And further:

If the country with which the treaty is made is dissatisfied with the action of the legislative department, it may present its complaint to the executive head of the government and take such other measures as it may deem essential for the protection of its interests. (124 U. S. R., 194.)

To the foregoing I must add the declarations of two of the present members of that court. Justice Miller says, as to reclamations growing out of legislative violation of treaties:

Questions of this class are international questions, and are to be settled between the foreign nations interested in the treaties and the political department of our Government. (1 Woolworth, 156.)

And Justice Blatchford says:

Congress legislates * * * subject to the responsibilities of this Government, in its national character, for any breach of its faith with foreign nations. (8 Blatchford, 310.)

My predecessor expressed his amazement that the Supreme Court should announce the doctrine that the act of Congress must be obeyed though it is in plain violation of the treaty, and that surprise has been shared by my Government; but it is my duty to do justice to this high tribunal. I must express my profound obligations to it for making the further declarations in its opinion given above, but especially for citing the decisions from which I have just quoted. These show that this august body, while it confesses its obligation to enforce the will of Congress within the United States, recognizes a broader and higher obligation and responsibility as resting upon the American Government—an obligation which requires it to see that the stipulations of its treaties are "kept with scrupulous good faith," and a responsibility which demands that "any breach of its faith with foreign nations is to be met and justified * * * according to the requirements of the rules of public law." Hence, Mr. Secretary, I present this view of the question to you, with the utmost confidence in your readiness to accept whatever responsibilities have attached to your Government for the "breach of its faith" as the resulting act of the legislation of your Congress, supported, as I am, in my demand, not only by the international authority of all nations, but by your own Department and by the highest tribunal and judges of your own nation.

I have shown you how the legislation of your Congress, which is conceded by your Supreme Court to be in violation of the treaties, has impaired or destroyed the rights and property interests of the three classes of Chinese laborers described, as well as of Chinese subjects entitled to free transit through the United States and of Chinese merchants obstructed in their business and denied the privileges extended to those of other nations. I abstain for the present from presenting any formal estimate of damages and losses sustained by the above classes of subjects through the legislative infringement of the treaties. I shall await your reply to this and the previous notes of this legation, in the hope that even yet a method may be found of undoing the wrongful legislation and restoring to their treaty rights the Chinese subjects now in, or entitled to come into, the United States. But, whatever may be the ultimate decision of your Government on this point, I am persuaded that

I have given you such cogent reasons to support the expectation of the Imperial Government to be informed without further delay of the views and intentions of your Executive respecting the treaty obligations toward China, that you will favor me with an early communication on the subject.

I improve, etc.,

TSUI KWY YIN.

No. 2.

Mr. Denby to Mr. Blaine.

No. 1123.]

LEGATION OF THE UNITED STATES,
Peking, July 25, 1890. (Received September 22.)

SIR: I have the honor to inclose a translation of a communication bearing date June 16, 1890, lately sent to me by the Tsung-li Yamén; also a translation of another communication bearing date June 17, 1890; also copies of my replies to these two communications. The delay in forwarding these papers was caused by my absence from Peking. It will be seen that the first of these communications relates mainly to the act of October, 1888, being the Chinese exclusion act, and that it recites that substantially similar inquiries were made by the Chinese minister at Washington of yourself and of your predecessor. While it must be admitted that under the fourth article of the treaty of 1880 it is entirely competent for the yamén to address complaints to me touching any legislative act, nevertheless, under the circumstances, it seemed prudent for me not to take up the proposed discussion until I had presented the matter to you and received your instructions. I answered the yamén in that sense. The communication of June 17 is mostly directed against the lately proposed Chinese enumeration bill, and the San Francisco ordinance which has for its purpose to confine Chinese residents to certain designated localities. I have replied to the yamén that my information was that the enumeration bill had been laid on the table in the Senate, and that the ordinance mentioned would be tested in the courts before any action would be had under it. It seemed to me unnecessary to discuss at this time the provisions of either measure.

This conduct is in accordance with the treaty, which applies only to measures "as affected."

I have, etc.,

CHARLES DENBY.

[Inclosure 1 in No. 1123.—Translation.]

The Tsung-li-yamén to Mr. Denby.

JUNE 16, 1890.

YOUR EXCELLENCY: Research reveals the fact that all the treaties entered into between China and the United States, beginning with that of the twenty-fourth Tao Kuang (1844, western style); then that of the eighth Hsien Teng (1858); that of the seventh Tieng Chit (1868), and that of the sixth Kuang-hsii (1880), four in all, originated on the part of the United States. Further, the proposed treaty, the draft whereof was jointly discussed by us in the year Kuang-hsii (1888), was also put forward by the Department of State under the last administration, the original idea not coming from China. Notwithstanding this, his excellency, the former President, set this treaty aside, and without premonition put in operation a new statute abso-

lutely prohibiting the coming of Chinese laborers into the United States, a statute widely at variation with the Chinese-American treaty of the seventh Tung Chit (1868), and a violation of the treaty of the sixth Kuang-hsii, wherein China authorized the restriction by the United States of the immigration of Chinese laborers. The fifth article of the treaty entered into between China and the United States in the seventh year of Tung Chit (1868) speaks of the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from the one country to the other, for the purposes of curiosity, of trade, or as permanent residents. The sixth article further says, * * * "Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most 'favored nation.'" Again, the treaty of Kuang-hsii (1880) between China and the United States says that whenever the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect, the interests of that country, or to endanger the good order of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable. Under these circumstances, the ratification by his excellency, the former President, on the 26th day of the eighth moon last year (western style, the 1st of October), of the statute enacted by Congress prohibiting immigration of Chinese laborers is beyond belief. Further, this yamén had previously, viz, on the 15th day of the eighth moon of that year (September 19), sent a dispatch to your excellency submitting for your consideration three additional clauses to the new treaty. To this, however, your excellency has never replied. The Chinese minister to the United States also submitted these three clauses in a dispatch to the Department of State. He, too, received not a word in reply. The new treaty, however, was rejected and a new statute was enacted in place of it. This method of dealing does not seem to us to agree with the spirit which animates the treaties of our two countries, and fails to accord with the several decades of friendship between us. Since the enacting of this new law Chinese going to and from the United States have all met with interference. His excellency Mr. Chang, former minister to the United States, first on the 25th day of the twelfth moon of the fourteenth Kuang-hsii (January 26, 1889), later on the 26th of the first moon of the fifteenth Kuang-hsii (February 22, 1889), wrote to the former Secretary of State on this subject. In reply to these dispatches he received an answer from the honorable Secretary, in which he merely intimated that as the President was about to go out of office he certainly would not ratify any legislation enacted in violation of treaty. He did not reply to any of the other important matters submitted to him.

After Mr. Blaine had entered on his duties as Secretary of State the former minister, Mr. Chang, on the 10th day of the sixth moon, fifteenth Kuang-hsii (July 7, 1889), wrote a dispatch making urgent inquiries for information, and demanding that the law enacted by Congress the preceding year, prohibiting Chinese laborers from entering the United States, be repealed.

These communications were exceedingly explicit in their statement of the case.

In reply, however, the Department merely stated that haste would be made in a careful consideration of the subject. As to the manner in which this consideration has been conducted, no information has as yet been given. This yamén observes that the Chinese minister, in his three dispatches above referred to, has, in the main, substantiated his position by quotation from the successive treaties between the United States and China. Now, by reference to the Foreign Relations of the United States, 1881, pp. 173, 185, and 198; and to the statutes of the United States, March, 1843, 5th chapter, p. 624; and to the Foreign Relations of the United States of 1870, p. 332; and to the Congressional Record, 1888, 19th chapter, pp. 8451, 8452, 8453; and to the message of President Hayes, March 1, 1879, to the Forty-fifth Congress, vetoing a bill; and to the message to Congress of President Arthur, April 4, 1882—by reference to these various documents kept on record by the United States Government, referring to statutes and matters with which your excellency is well acquainted, it may be easily ascertained why the Department of State persistently refused to give definite answers. Sincerely interested, as your excellency is, in the relation of our countries, you probably are aware that the law now in operation, contrary to treaty stipulations, interferes with Chinese subjects in their efforts to gain a livelihood, as well as violates the several treaties themselves. Last year at the opening of Congress his excellency the President, in his message to that body, stated that the failure to ratify and exchange the new treaty negotiated between China and the United States, and the legislation of the last session of Congress consequent thereto, had left some questions open, to the deliberation of which it was now his duty to request Congress to approach with justice and equity, etc.

This yamén has not heard from your excellency whether or not during these months any such deliberations have been entered into by the Congress of your country.

His excellency Mr. Tsui, our present minister, has frequently written to the Department on the subject, but receives no replies. We request, finally, that your excellency will clearly indicate to us what article of the treaty it is that your honorable Congress relied on in enacting the new law of last year. Should statutes be enacted without adherence to the treaties, then the Chinese residents in the United States must, in time to come, suffer varied and repeated hardships. This result we fear, can not be avoided. The Chinese have gone to America because repeated treaties have authorized them to go and come at their pleasure, and to enjoy there the advantages of citizens of the most favored nation. For this reason the residents on the coasts of China have gone to the United States in large numbers to gain their subsistence. There they have accumulated considerable property. Now that suddenly their going to and fro is prohibited, to whose charge shall be given their homes and property in America? The new law enacted by Congress is totally at variance with the treaties, and we consider it a violation of the spirit which prompted your country in its repeated requests to China to execute treaties with it. It forms an entirely new episode in the relations of the two countries, and, though there was a disagreement with France in 1798, the instance is one which is seldom met with in the history of the United States with other countries.

Your excellency is thoroughly conversant with the treaties between China and the United States; we therefore request you at once to write to the Department of State to secure the repeal of the laws in violation thereof. We hope, also, to receive an answer to this important matter.

A necessary communication, etc.

[Inclosure 2 in No. 1123.—Translation.]

The Tsung-li Yamén to Mr. Denby.

JUNE 17, 1890.

YOUR EXCELLENCY: It is customary to speak of the relations between China and the United States as characterized by continuous cordiality. The treaties which China has on various occasions entered into with the United States have all been animated with the intention to protect the interests of American citizens. The United States, however, because of discrimination against Chinese laborers, have repeatedly enacted laws in violation of treaty, and all having for their object the maltreatment and injury of Chinese subjects. We have lately received from his excellency Mr. Tsui, minister to the United States, a communication, wherein he says that the Lower House of the United States Congress has had under discussion recently the enacting of a vexatious law requiring the enumeration of the Chinese in the United States, in California; moreover, a statute has been recently enacted driving out and expelling the Chinese from the larger cities. On reading this, very great was our indignation and grief. The second article of the supplementary treaty between China and the United States of the sixth Kuang-hsü (1880) says that Chinese merchants "and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accorded all the rights, privileges, immunities, and exemptions which are accorded to citizens and subjects of the most favored nation." Article III says: "If Chinese laborers or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its power to devise measures for their protection and secure to them the same rights, privileges, immunities, and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty." The vexatious law for the enumeration of the Chinese seems to be not only a contradiction of the "favored-nation" clause in the successive treaties between China and the United States, but a violation of the Constitution on which your Government is built. In the law for the driving out and expulsion of the Chinese and the limitation of their residence hereafter to a particular locality no inquiry has been made as to whether they had property or not. They are all alike to be forced into one narrow place and not allowed the usual privileges of residence. After sixty days those not driven out shall be ordered to prison. We do not know whether the Chinese now residing in the United States are all those who in former times went thither under the treaty which your Government entered in with China in order to authorize their going. Their strength, however, was availed of and their labor used. Afterwards, as soon as the railroad had pierced through to California, and when business flourished, the virtues of the Chinese were no longer remembered, and they were regarded as enemies. At first hostility arose, then there was burning of houses, then there was expulsion of Chinese; now they are to be forced to live in one locality and be allowed no residence elsewhere.

It seems that they are to be gathered together to inflict further injuries on them. This is a contradiction of those words of the treaty which say they may "go and come of their own free will and accord," while the proposed imprisonment after sixty days is annullification of that treaty clause which speaks of enjoying the advantages of the subjects of the "most favored nation." Should such acts as these originate with the citizens or subjects of another country, should they so insult and ill treat the Chinese laborers, the Government of your honored country would be in duty bound to "exert all its power to devise measures for their protection," and thus fulfill its treaty obligation. Now, however, contrary to all our expectations, these oppressions and these insults come from the United States, whose relations with us it is customary to designate as cordial. We are humbly of opinion that in the law of nations reciprocity is considered most important. Suppose that China should conduct herself toward American citizens in a similar manner, we ask whether the Congress of the United States would not reproach China with a violation of the treaty? And would your excellency sit still and make no inquiries of us? Change your point of observation. At this time China can not refrain from expressing her feelings, and it is just that she should do so. The whole truth is that this class of Chinese laborers, although living beyond the outer seas, are not the less the children of China, and she is unable to cast them from her breast. It is our duty, therefore, to communicate with your excellency and to express the hope that you will write to the Department of State to abrogate the laws requiring enumeration and forced restriction of residence. We hope for an early reply. We further wish that you would transmit to the Department of State a request to speedily reply to the dispatch of last year from his excellency Mr. Tsui, the present minister, sent during the second intercalary month, and that of the former minister, Mr. Chang, and thus show some concern for the important matter of the good relations of our countries.

A necessary communication, etc.

[Inclosure 3 in No. 1123.]

Mr. Denby to the Tsung-li-yamén.

No. 7.]

LEGATION OF THE UNITED STATES,
Peking, July 26, 1890.

YOUR HIGHNESS AND YOUR EXCELLENCIES: I have the honor to acknowledge the receipt of your communication of June 16, 1890. I seize the earliest opportunity after my return to Peking to reply to the same.

You set out in detail the dates of the treaties and make some observations on their origin. You proceed to comment on the act of Congress of October, 1888, relating to the exclusion of the Chinese laborers, which act you severely criticise. You further state that I sent no reply to your communication of the 15th day of the eighth moon of the fourteenth year of Kuang-hsii (September 20, 1887). I beg leave to say that I acknowledged the receipt of your communication. I forwarded it to my Government. I have received no advices from my Government touching the three suggestions made. You further state that you have addressed, through your minister at Washington, the present Secretary of State and his predecessor on this subject and are without a reply. You cite various documents and Presidential messages. You then make some comments on the alleged injustice of the act of Congress of which you complain, and you request that I take up this discussion with you, and that I clearly indicate to you what article in the treaty it is that Congress "relies on in enacting the new law of 1888." You proceed to detail the alleged hardships to which Chinese subjects will be subjected by the operation of the new statute, and you severely criticise the said statute. You request me, in conclusion, to write the Secretary of State to secure the repeal of the said law.

In reply to this communication, I have to say that I have sent to the Department of State a translation of your communication.

I think that under the circumstances detailed by you it is best for me to await the instructions of my Government before taking up the discussion of the matters stated. I must therefore beg of you to await a more specific reply to your communication until I shall have received the instruction of the honorable Secretary of State.

I avail, etc.

CHARLES DENBY.

[Inclosure 4 in No. 1123.]

Mr. Denby to the Tsung-li-yamén.

No. 8.]

LEGATION OF THE UNITED STATES,
Peking, July 26, 1890.

YOUR HIGHNESS AND YOUR EXCELLENCIES: I have the honor to acknowledge the receipt of the communication of your highness and your excellencies of June 17, 1890.

I seize the earliest opportunity after my return to Peking to reply to it. You therein state that the United States "have repeatedly enacted laws in violation of treaty, and all having for their object the maltreatment and injury of Chinese subjects." Under the treaty of 1880 it is competent for the Government of China to bring the attention of the Government of the United States or that of the minister to China to the consideration of any legislative measure which may be found to work hardships upon the subjects of China.

As I understand this provision, it is applicable to laws that have been enacted by Congress and have received the sanction of the Executive, or been passed over his veto in accordance with the Constitution, and that have become valid and are in force. A complaint made in the general addressed to newly proposed laws which are not in force would require much time for discussion, and such time might be uselessly expended. You state that you have been informed by your minister at Washington that the Lower House of Congress has had under discussion recently the enacting of a vexatious law requiring the enumeration of the Chinese in the United States. You have probably been informed by your minister before this time that the said bill failed in the Senate, was laid on the table, and will in all human probability not become a law. It is unnecessary to waste any time in the discussion of this measure.

You refer, also, to the ordinance lately passed by the city of San Francisco. That city passed an ordinance by which the residence of Chinese subjects was restricted to certain designated localities. If this ordinance be antagonistic to the treaties, as your highness and your excellencies claim, then it will be set aside by the courts and held to be naught and void. Under our system of Government it is not competent for any State or city to enact laws contrary to the provisions of any existing treaties. I have not learned that the Chinese consul or the Chinese residents of San Francisco are much alarmed at the passage of the ordinance in question. Until the courts shall have decided that the said ordinance is legal and binding, and some action that is prejudicial to the Chinese has been had thereunder, it would seem to be unnecessary to discuss its provisions.

I have sent to the Secretary of State a translation of your communication, and I am sure that it will secure the attention that its importance warrants.

I avail, etc.,

CHARLES DENBY.

No. 3.

Mr. Tsui to Mr. Blaine.

CHINESE LEGATION,

Washington, October 1, 1890. (Received October 1.)

SIR: Under date of March 26 last I was impelled by an urgent sense of duty to send you a note of some length, citing the notes which my predecessor had addressed to the late Secretary of State and to yourself respecting the status of our treaty relations as affected by the action of the last Congress of your country, and giving some additional reasons why, in my opinion, it was the imperative duty of your Government to furnish an early and comprehensive reply to the several notes of this legation.

It has filled me with wonder that neither an acknowledgment of its receipt nor a reply thereto has up to this time been received. Knowing how carefully and courteously you observe all the requirements of diplomatic intercourse, I have not attributed this neglect to any personal choice on your part. I have persuaded myself that your silence has been enforced by some controlling reasons of state which have, in your opinion, made it prudent that you should still defer for a time the

answer which my Government has for many months past been very anxious to receive.

I would continue, out of personal regard to you, to exercise patience on the subject if I were permitted to do so. But I am sorry to say that this I can not do. Upon receipt of a copy of my note to you of March 26, 1890, my Government, so fully persuaded of the justice of the representations made by this legation, communicated with his excellency Minister Denby, and urged him to present to his Government the lively desire of the Chinese Government for an early reply to these representations, and that steps be taken to undo the wrongs being inflicted on Chinese subjects as a result of the act of October 1, 1888. And I have been instructed by the Tsung-li Yamén to likewise again ask that early attention be given to the cited notes of this legation. In addition to this instruction, the losses and injuries being suffered by thousands of my countrymen, on account of the rigorous enforcement of the exclusion law of 1888, impel me to redouble my efforts to secure some redress and restore our treaties to respect and observance.

I beg you, Mr. Secretary, to regard this, my present note, not as an act of embarrassment to you, but as a friendly effort on my part to restore and reaffirm the former cordial relations which have existed between our two countries. The old nation, with its hundreds of millions of people, on the other side of the ocean, extends its hand across the great waters to the young nation in front of it, with its wonderful development in population and resources, and asks for a continuance of friendship and commercial intercourse upon the basis of treaty rights and reciprocal justice. Our sages and statesmen for ages past have taught our nation principles of justice and good faith, which, upon establishing diplomatic relations with the nations of the western world, we found to agree with the code of international law as framed by the writers and statesmen of your country; and having learned, through the disinterested friendship which hitherto had marked the conduct of your Government in its relations to China, to regard your nation as a model in the practice which should control governments in their reciprocal intercourse, we accepted its code of international law; and to this code we appeal in the settlement of the difficulties which have unhappily arisen between us, and which it is the anxious desire of the Imperial Government to have adjusted in the speediest manner possible. In the interest, therefore, of our past friendship, and to promote and cement more firmly our good relations, I again communicate to you the respectful request of my Government that the cited notes of this legation may have your early attention, and that I may be favored as promptly as possible with the views and instructions of the Government of the United States.

I improve this opportunity, etc.,

TSUI KWY YIN.

No. 4.

Mr. Blaine to Mr. Tsui.

DEPARTMENT OF STATE,
Washington, October 6, 1890.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, in which you recur to the subject of the note addressed by you to the Department on the 26th of March last, to which no formal reply has been made.

I am happy to confirm your surmise that the delay in making such a reply has not been due to any neglect or lack of appreciation of the representations you have made or of the importance of the preservation of the cordial and traditional relations of friendship which have subsisted between our two governments. The questions which you present have been and are now the subject of careful consideration on the part of this Government, and I hope to be able at an early day to convey to you the views of the President in an ample and formal manner.

In communicating to you this expectation, I desire to assure you of my appreciation of the sentiments of amity that pervade the note to which I now have the honor to reply.

Accept, etc.,

JAMES G. BLAINE.

No. 5.

Mr. Denby to Mr. Blaine.

No. 1181.]

LEGATION OF THE UNITED STATES,
Peking, October 22, 1890. (Received December 3.)

SIR: I have the honor to inclose herewith a translation of a communication received from the foreign office, together with a copy of my answer thereto. The purport of this communication is a reiterated complaint that you have failed to send a reply to the representations made to you by the Chinese minister at Washington, touching the repeal of the Chinese exclusion act of October, 1888.

The foreign office again appeals to me to address you on the subject and to ascertain finally what action will be taken in the premises and send them a specific reply. In my answer I have undertaken to explain that Congress alone, under our form of government, has the power of legislation, and that you could not in advance determine what its action might be. The communication alluded to by the foreign office will be found in my dispatch No. 1123 of July 25, 1890. Without specific instructions from you, I do not feel myself authorized, nor do I deem it prudent for me, to enter upon a discussion with the yamén either upon the merits of the "Scott act" or of the mode of reconciling China to its results and effects.

I have, etc.,

CHARLES DENBY.

[Inclosure 1 in No. 1181—Translation.]

The Tsung-li Yamén to Mr. Denby.

Informal.]

PEKING, October 19, 1890.

YOUR EXCELLENCY: Upon the 16th of June, 1890, the yamén had the honor to inform your excellency that in the matter of the new restriction act, an act abrogating existing treaties, repeated communications were sent to the Chinese minister at Washington, requesting him to ask that it be rejected or repealed, but the honorable Secretary of State has failed to send a reply to the representation made to him, and your excellency was therefore requested in the yamén's communication to address Mr. Blaine requesting the repealing or rejection of this vexatious act.

Upon the 26th of July, 1890, your excellency replied to the effect that you had transmitted a translation of the yamén's communication to the honorable Secretary of State for his perusal, but it would be necessary to wait a reply from the Depart-

ment of State before sending a specific reply, etc. Now, the ministers would observe that this matter has been pending for over four months, and if the honorable Secretary of State has at heart the friendly relations of the two countries, he certainly should not permit or be willing that this matter should be delayed, set aside, and take no notice of it. The ministers would beg your excellency to again address the honorable Secretary of State, and ascertain finally what action will be taken in the premises and send them a specific reply and oblige.

Cards with compliments, etc.

[Inclosure 2 in No. 1181.]

Mr. Denby to the Tsung-li Yamén.

Informal.]

LEGATION OF THE UNITED STATES,

Peking, October 22, 1890.

YOUR EXCELLENCIES: I have the honor to acknowledge the receipt of the communication of your excellencies of the 19th instant, wherein you state that repeated communications had been sent to the Chinese minister in Washington, requesting him to ask the Honorable Secretary of State that the Chinese exclusion act of October, 1888, be rejected or repealed. Your excellencies state that to these requests the Secretary of State has failed to send a reply. Your excellencies further state that you had requested me to address the honorable Secretary of State on the subject, and that I informed your excellencies on the 26th of July last that I had transmitted a translation of the yamén's communications to the honorable Secretary of State, and that I awaited his instructions. I have now to state that I have received no reply from the honorable Secretary of State on this subject. Your excellencies will permit me, however, to remind you that under our form of government the making of laws, as well as the repealing or altering of laws already enacted, is intrusted to the two Houses of Congress. The President has the power of vetoing any act of Congress, but his veto may be overridden by a two-thirds vote of the members of the two Houses. It is not within the power of the Secretary of State to reject or repeal any law. Your excellencies ask me "to again address the honorable Secretary of State, and ascertain finally what action will be taken in the premises, and send them (you) a specific reply."

From my statement above made of the power of the honorable Secretary of State, it is plain that it will be impossible for him to state in advance what the action of Congress may be on any subject. I will take great pleasure in communicating to the honorable Secretary of State a translation of your present communication. In this connection I have the honor to inform your excellencies that the ordinance of the city of San Francisco which purported to exclude the Chinese residents of that city from a certain portion of the city, and of which you complained to me in your communication to me of June 17 last, has been decided by the United States courts to be null and void and of no effect.

In my communication to you of July 26 last, I plainly intimated that this result would follow an appeal to the courts.

I have, etc.,

CHARLES DENBY.

No. 6.

Mr. Tsui to Mr. Blaine.

CHINESE LEGATION,
Washington, December 4, 1890. (Received December 5.)

SIR: From the several notes which have been addressed to your Department by this legation since the passage by the Congress of the United States of the exclusion act of October 1, 1888, it is known to you that my Government has earnestly desired that that honorable body should undo that act of hardship and treaty abrogation. I watched with interest the proceedings of the last session, and at its close it became my unpleasant duty to inform my Government that it had adjourned without taking any action looking to the repeal or modification of the act of 1888.

I am now in receipt of instructions from the Imperial Government

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directing me to convey to you the disappointment it has experienced at the intelligence communicated by me, and to express to you the hope that during the session which convened on the 1st instant Congress may take such action as will assure the Imperial Government of the desire of that of the United States to maintain in full force and vigor the treaties entered into between the two nations, and thus renew and strengthen the friendly relations which have so long existed.

I hope that you will not interpret this note into any manifestation of impatience at the nonreceipt of the reply which was promised in your note to me of October 6 last. You will, I am quite sure, understand the natural desire of my Government (which makes it my duty at this time to again address you) to relieve the many thousands of my countrymen from the sad situation in which they have been placed by the passage of the law cited. The records of the custom-house at San Francisco alone show that over 20,000 Chinese subjects who had left their temporary homes and business in the United States, bearing with them, under the seal of the United States, certificates of their right to return, were, in violation of these certificates and of solemn treaty guaranties, absolutely and without notice excluded from the United States by that law enforced, that those Chinese who were on the high seas at the time it was passed were forbidden to land at San Francisco and were driven back to China. The great pecuniary loss which these Chinese subjects have sustained on account of being excluded from their temporary homes and business in this country has been regarded by my Government as a serious hardship. Besides these, the law has been very oppressive and unjust in its effects upon a still greater number of Chinese subjects. Under the provisions of the treaty of 1880, the Chinese laborers then in the United States were guarantied the right "to go and come of their own free will and accord," but the act of 1888 nullifies this stipulation, and the Chinese laborers are therefore denied the privilege of a visit to their native land, or it must be made at the sacrifice of all their business interests in this country.

In view of the injustice and loss which has been and still is being inflicted by the operations of this law, my Government has felt it necessary that I should again make known to you its earnest desire that something should be done to alleviate the injuries being suffered on account of its passage.

I need hardly add that this representation is not made out of any disposition to aggravate the present unsatisfactory condition of our relations, but with the earnest hope that it may lead to some settlement which will cement our old friendship and create new relations of harmony and freer commercial intercourse.

I improve the opportunity, etc.,

TSUI KWY YIN.

No. 7.

Mr. Tsui to Mr. Blaine.

CHINESE LEGATION,
Washington, March 22, 1892. (Received March 23.)

SIR: I have to write to you now respecting a matter about which it is not pleasant for me to trouble you, and which I would not do if my duty to my Government did not compel me.

As you know very well, the minister who represented the Imperial Chinese Government before me sent you and Secretary Bayard long notes about the violation of the treaties by the American Congress, and, no replies having been sent, I also, instructed to do so by my Government, have written you more than once on the subject. It has made me very sorry to have been the minister of my country in Washington so long without being able to obtain a reply to these notes about a matter in which China is so much interested.

You will not forget that I have frequently taken occasion in my visits to you at the Department to speak to you about this subject, and that I have been promised by you a reply. I have written of this promise to my Government, and you will not be surprised when I say that it can not understand why the promised reply on so important a subject is not sent. Before my late visit to Cuba I spoke to you about it, and again when I called on you at the Department after my return, and on both occasions you assured me that an answer should be sent very soon.

I would not trouble you now, but I have very lately received urgent inquiries from the tsung-li yamén and from the Viceroy Li Hung Chang, instructing me to again press for an answer to those notes of the legation. I beg, therefore, that you will do me the favor to send me a note about this matter very soon.

I am more anxious than ever to know what you think about this matter, because I hear that more bills are proposed in the American Congress which, if they are favorably voted, will make still further violations of the treaties. Thus it seems to me that while the Congress is so anxious to enact laws against the Chinese, it does not consider how much it disregards the observation of the treaty stipulations; but this is not what my Government expects of the United States Government.

Accept, etc.,

TSUI KWY YIN.

No. 8.

Mr. Tsui to Mr. Blaine.

CHINESE LEGATION,

Washington, April 12, 1892. (Received April 12.)

SIR: In your absence from the Department on yesterday I called upon Mr. Wharton, the Assistant Secretary of State, and communicated to him the substance of a telegram which I received on the day before from the tsung-li yamén, communicating that it had received information of the passage of a bill by the House of Representatives of the United States prohibiting the future coming of Chinese to the United States, and I was directed to bring the matter to your attention, in view of the fact that the said bill was understood by the tsung-li yamén to be in violation of our treaty stipulations.

In answer to my inquiry as to what course I should adopt in view of this instruction, Mr. Wharton stated that if I should send a note to the Department setting forth the views of my Government the Department would take pleasure in transmitting a copy of it to the Committee on Foreign Relations of the Senate, which I understood from him had the bill now under its consideration. I beg, therefore, to direct your attention to the fact that the said bill violates every single one of the articles of the treaty which was negotiated in 1880 by the Commission-

ers who were sent out from your Government to China for the express purpose of agreeing with the Chinese Government upon such a treaty as the Government and people of the United States wanted, by which to regulate the immigration of the people of China to the United States. The record of the negotiations which took place in 1880 will show that the American Commissioners laid before the Chinese Government the terms of the treaty which they desired and which they said would prove satisfactory to their people. In answer to their request the Chinese Government made that treaty, and have since that time sought in all ways within its power to have this and all other treaty stipulations between the two countries faithfully executed so far as the Chinese Government is concerned. My Government can not, therefore, understand why a bill should now be introduced into Congress which violates outright all the provisions of that treaty, which was made at the express request of the United States.

The bill about which I now write you not only violates Article 1 of the treaty of 1880 in making absolute the prohibition of the coming of Chinese laborers to the United States; but contains legislation which is in violation of the last clause of the article, which says that the legislation shall not be of such a character as to subject the laborers to personal maltreatment or abuse.

It violates Article 2 in that it prohibits the coming to the United States of teachers, students, merchants, or Chinese subjects from curiosity or travel, as it also excludes all their body and household servants. The bill further prohibits the return of Chinese laborers who are now in the United States, and who, according to the treaty, were to be "allowed to go and come of their own free will and accord."

It violates Article 3 in that it does not grant to Chinese subjects in the United States "the same rights, privileges, immunities, and exemptions" as are "enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty." The bill, besides subjecting the Chinese in the United States to various annoyances and penalties, also requires that they shall take out a certificate of residence, which certificate is required to contain a photographic copy of the applicant, together with other restrictions and penalties, which, as I am informed, is not required by the citizens or subjects of any other foreign country now living in the United States.

I beg that you will, Mr. Secretary, exert your influence with the committee before whom I learn from Mr. Wharton the bill is now being considered, believing that you have the same interest and desire as the Chinese Government to preserve inviolate the solemn treaty stipulations which have been made between the two governments.

I send to you, with this note, an original statement signed by Mr. Phelps, the collector of customs of San Francisco, and also a copy of the same, which shows that since the restriction act of 1882 went into effect the number of departures of Chinese from the port of San Francisco have exceeded the arrivals by 32,000 persons, which statement would seem to indicate there is no occasion for alarm as to the increase of Chinese immigration into the United States. After you have compared the original statement with the copy, in order to be satisfied of its authenticity, I ask that you will return the original to me.

Accept, sir, etc.,

TSUI KWY YIN.

CUSTOM-HOUSE, COLLECTOR'S OFFICE,
San Francisco, Cal., March 30, 1892.

Arrivals and departures of Chinese at the port of San Francisco from date of the restriction act, August 5, 1882, to December 31, 1891.

	Arrivals.	Departures.
From August 5, 1882, to December 31—		
1885.	18,703	40,221
1886.	6,714	12,267
1887.	11,572	9,919
1888.	17,981	8,661
1889.	1,017	6,906
1890.	2,725	8,229
1891.	2,123	6,717
Excess of departures	60,835	92,925
	32,090	

The above is a correct statement, taken from the records of this custom-house.

T. G. PHELPS, Collector.

No. 9.

Mr. Tsui to Mr. Blaine.

CHINESE LEGATION,
Washington, April 21, 1892. (Received April 21.)

SIR: On the 12th instant I had the honor, under the instructions of the Imperial Government at Peking, to submit to you its views respecting the legislation now pending in the Congress of the United States as to the coming of Chinese to the United States. Since the date of that note I have received a second cablegram from the Tsung-li Yainén, in which I am instructed by it to urge upon you the importance of both Governments of the preservation of our existing treaties, which the pending legislation threatens to destroy. I can only repeat my earnest desire that you will do whatever you can to prevent any violation of these treaties by the Congress of the United States.

Accept, sir, etc.,

TSUI KWY YIN.

No. 10.

Mr. Tsui to Mr. Blaine.

CHINESE LEGATION,
Washington, May 5, 1892. (Received May 5.)

SIR: I learn from the reports of the proceedings of the Congress that the bill concerning the Chinese, about which I have written and talked with you, has finally been passed by that high body, and I am told that it only remains for it to secure the name of his excellency the President to become a law of this country. I have already protested to you against it as a violation of the treaty of 1880, and I now want to make use of the privilege which is secured to me by Article 4 of that treaty, to bring the matter to your notice in the most urgent manner that I

can, and ask you to lay what I have to say before his excellency the President before he shall act upon the bill which has just passed the honorable Congress.

In the notes which my predecessor and I have some time ago sent to your Department we have shown how the Scott bill, passed by the Congress of 1888, was a clear violation of the treaty of 1880. Your own silence on the subject must be understood to be a recognition that what we have charged is true. In fact, your own Supreme Court has admitted that. Now, the Congress, in the bill which has just been voted, has a provision that this bad law shall be kept in force.

But this bill does even worse injury than the Scott law. In its section 5 it denies to Chinese the right of bail in habeas corpus suits. One of the honorable Senators, who, I have heard, is a fine lawyer, stated in the Senate that this section "was inconsistent with one of the fundamental principals of justice that exists in China, America, and everywhere where God reigns." You must agree with me, Mr. Secretary, that it violates sections 2 and 3 of the treaty of 1880.

Section 6 of the bill makes it necessary for all Chinese laborers to get a certificate from the collector of internal revenue to entitle him to remain in the country. The collector may give it to him if he wants to, and if he does not want to the Chinese must leave the country, as there is no method provided to compel the collector to do justice to the Chinese laborer. If a Chinese is arrested for not having a certificate he must prove by a white man that he is entitled to be in the country, and as the first law prohibiting Chinese laborers coming to the country was passed just ten years ago, the laborer must find a white man who knew him on or before 1882. The laborer who is now in Washington City, or Texas, most likely lived in California in 1882. He must go to California and see if he can find a white man who knew him ten years ago, and return with the evidence to the place where he now lives. One of the Senators from Texas said that Chinese in his State would have to travel 500 miles to find a collector to give the certificate, and he would have to take a white witness with him. In pointing out some of these difficulties, the Senator from Connecticut said that the law practically meant that all the Chinese laborers now in the United States would have to depart within a year and leave their possessions and their property, and in some instances their families. And the honorable chairman of the Committee on Foreign Affairs said the same thing, and he compared this provision of the law to some of the regulations of the old slavery times before the great war which you fought to get rid of slavery; and he said, also, that it was precisely like the ticket-of-leave practice of the Australian convicts.

The same section permits a Chinese to be arrested without any warrant or authority, and then he is required to prove his innocence before the court. I do not claim much knowledge of American law, but I had supposed that in all good and just governments a man had to be proved guilty before he could be punished. And I see that in the discussion of this bill Senators who have been educated as lawyers, and understood your laws, have declared that such a provision is contrary to all your law principles and practice and denounced it as "unquestionably an act of barbarous legislation."

These are some of the objectionable provisions of this bill which is now before his excellency the President. I could point out others, as they have been mentioned by honorable Senators, but it is a waste of your time for me to do so, as both the President and you are so much better informed than I am as to the law principles which govern your

country, and which have made it one of the most enlightened nations of the world. It only remains for me to direct your attention to the stipulations of articles 2 and 3 of the treaty of 1880, and to ask you and his excellency the President to see how plainly section 6 of the bill now before the President violates those stipulations.

In the unanswered note of my predecessor to your Department, dated January 26, 1889, the circumstances under which the treaty of 1880 was negotiated are told, and I beg you to have the President read that note. (See Senate Ex. Doc. 41, Fifty-first Congress, first session, p. 5.) This action of my Government in making the treaty of 1880 at the particular request of your Government, as well as its conduct at other times, led one of your predecessors, Mr. Evarts, to say in the Senate that China has always made whatever treaty stipulations and changes the American Government ever asked, and had always been most conciliatory in its negotiations. Under such a state of relations I can not understand why the honorable Congress should be so hasty to pass laws which violate the very treaty which your Government asked China to make, and I can not believe that the enlightened Chief Magistrate of this great country will join with the Congress in such treaty violation by approving this bill. Relying upon you, Mr. Secretary, to use your powerful influence to prevent such a sad event, I improve this occasion to assure you of my highest consideration.

TSUI KWY YIN.

No. 11.

Mr. Denby to Mr. Blaine.

No. 1542.]

LEGATION OF THE UNITED STATES,
Peking, June 17, 1892. (Received July 23.)

SIR: I have the honor to inclose the translation of a communication received from the foreign office the 13th instant, relating to the Chinese exclusion legislation of Congress, and a copy of my reply thereto.

As requested, I wired you the 17th instant as follows:

Foreign office desires to know if President approved act continuing restriction of Chinese ten years.

The communication of the foreign office evidently refers primarily to the Geary bill. I learn from the newspapers that a conference committee of the two Houses of Congress substituted a Senate bill for the Geary bill, but whether this substitute has become a law I do not know.

I request that a copy of all recent acts affecting the question of Chinese immigration be sent to me.

I have, etc.,

CHARLES DENBY.

[Inclosure 1 in No. 1542.]

The Tsung li-Yamén to Mr. Denby.

Peking, June 13, 1892.

Upon the 10th June, instant, the prince and ministers had the honor to receive from his excellency, Tsui, Chinese minister at Washington, a copy of a restriction act against Chinese, presented in the House of Representatives on (the 8th day, third

moon, present year of Kuang Hsii) the 4th of April, 1892, consisting of fourteen articles, the provisions of which are extreme in their rigor and very injurious to the good name of the United States Government.

The provisions of Article 14 are to effect that if the provisions of existing treaties between China and the United States are in the least at variance with the terms of the bill, they are to be entirely abrogated. The yamen can not but regard the bill in a strange and frightful light.

Friendly relations have existed between China and the United States for several tens of years, but the action now taken by the representatives of Congress in the matter of the restriction of Chinese laborers evinces a desire to destroy and set aside the provisions of the treaties that have existed during these years.

In the Senate a bill has been discussed providing for the continuance of the act of 1888 for a period of ten years. These bills have been published and are universally known far and near.

The prince and ministers do not know whether the President, in perusing these bills, which are in violation of and abrogate the treaties, will approve of them or not. If the treaties of friendship of several tens of years' standing are to be abrogated instantly, then such action would be decidedly at variance with the original intent and purpose of the United States Government when it negotiated the treaties with China.

The treaties between the United States and China all originated at the instance of the former Government. The yamen two years ago argued and discussed the question of the restriction of Chinese laborers, and clearly and minutely set forth the views entertained, in a communication addressed to the United States minister.

The prince and ministers have the honor to now request his excellency the minister of the United States to be good enough to dispatch a telegram inquiring of the Secretary of State whether the bill discussed in Congress, in violation of treaty, continuing the restriction of Chinese for a further period of ten years, has received the approval and signature of the President or not, and to send a reply at an early date, and oblige.

A necessary communication addressed to his excellency Charles Denby, etc.

[Inclosure 2 in No. 1542.]

Mr. Denby to the Tsung-li Yamen.

LEGATION OF THE UNITED STATES,
Peking, June 17, 1892.

YOUR HIGHNESS AND YOUR EXCELLENCIES: I have the honor to acknowledge the receipt of the communication of your highness and your excellencies of the 13th instant.

Your highness and your excellencies request me to wire to the honorable Secretary of State of the United States, to ascertain whether his excellency the President has approved of "the bill discussed in Congress * * * continuing the restriction of Chinese for a further period of ten years."

I have, as requested, sent a telegram to that effect to the honorable Secretary of State, and will transmit the substance of the answer thereto to your highness and your excellencies when it is received.

I have, etc.,

CHARLES DENBY.

No. 12.

Mr. Denby to Mr. Blaine.

No. 1544.]

LEGATION OF THE UNITED STATES,
Peking, June 20, 1892. (Received August 9.)

SIR: In my dispatch No. 1542, of June 17, I transmitted to you copies of a correspondence between the foreign office and myself touching the question whether the President had approved the recent act of Congress relating to Chinese restriction. Having received your cablegram of June 17, of which I acknowledged the receipt in my dispatch

No. 1543, of June 19, I sent this day to the foreign office a communication of which a copy is herewith inclosed. I shall await your instructions of the 17th ultimo before taking any further action.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 1544.]

Mr. Denby to the Tsung-li Yamén.

LEGATION OF THE UNITED STATES,
Peking, June 20, 1892.

YOUR HIGHNESS AND YOUR EXCELLENCIES: I have the honor to inform your highness and your excellencies that the honorable Secretary of State has informed me by cablegram that the President has approved the recent Chinese restriction law which was enacted by Congress, extending existing legislation ten years.

An official copy of this law was mailed to me on the 17th ultimo, but has not yet reached me. I will transmit a copy thereof to your highness and your excellencies as soon as one reaches me. In advance of the receipt of an official copy it would serve no good purpose to set out in detail the provisions of this law, but judging from newspaper copies that I have seen thereof it is safe to say that it simply extends existing laws for the period of ten years, and provides some additional safeguards for their execution.

It does not apply to any class of Chinese subjects except laborers.

I have, etc.,

CHARLES DENBY.

No. 13.

Mr. Denby to Mr. Blaine.

No. 1553.]

LEGATION OF THE UNITED STATES,
Pekin, July 5, 1892. (Received August 17.)

SIR: In your dispatch No. 725, of May 17 last, you inclosed a circular of the Acting Secretary of the Treasury covering printed copies of the acts of Congress from May 6, 1882, to May 5, 1892 (except the act of September 13, 1888), relating to Chinese exclusion.

I have now the honor to inform you that I transmitted to the foreign office on the 4th day of July a printed copy of the said circular, together with a communication of which a copy is herewith inclosed.

I have, etc.,

CHARLES DENBY.

[Inclosure No. 1553.]

Mr. Denby to the Tsung-li Yamén.

LEGATION OF THE UNITED STATES,
Peking, July 4, 1892.

YOUR HIGHNESS AND YOUR EXCELLENCIES: In my communication to your highness and your excellencies of June 20, 1892, I had the honor to state that I would transmit to you a copy of the recent act of Congress entitled "An act to prohibit the coming of Chinese persons to the United States," as soon as I should receive a copy thereof.

I have now the honor to inclose copies of the following papers, viz:

First. A circular of the Secretary of the Treasury informing collectors and other officers of the customs of the passage and approval of the above-mentioned act.

Second. A copy of the act of Congress above mentioned, approved May 5, 1892.

Third. A copy of the act of Congress approved May 6, 1882.

Fourth. A copy of the act of Congress approved July 5, 1884.

Fifth. A copy of the act of Congress approved October 1, 1888.

These acts cover all the legislation of Congress on Chinese exclusion except the act approved September 13, 1888. This last act was dependent by its terms on the ratification of the proposed treaty of 1888, and was to take effect only after the ratification of that treaty. As the treaty of 1888 was not ratified by China, this act never became operative.

I have, etc.,

CHARLES DENBY.

No. 14.

Mr. Denby to Mr. Foster.

No. 1569.]

LEGATION OF THE UNITED STATES,
Peking, August 18, 1892. (Received September 28.)

SIR: I have the honor to inclose a translation of a communication that I recently received from the foreign office on the subject of Chinese exclusion legislation of the United States, together with a copy of my answer thereto.

Under Article IV of the treaty of 1880 (Treaties 1776-1887, p. 183) it is competent for the foreign office to take up this discussion with the minister of the United States at Peking.

It will be seen that the yamén severely criticises the legislation in question and requests that the President take steps to secure its repeal. A sufficient abstract of this communication will be found in my answer thereto.

On account of an intimation in the Department's dispatch, No. 553, of September 24, 1890, I have hitherto forbore to enter into any argument with the foreign office on this subject. In the present conjuncture of affairs, I concluded that a temperate presentation to the yamén of the scope, effect, and legality of the Chinese exclusion legislation, and a reasonable argument, tending to show that by the treaty of 1880, China had given her consent to the enactment thereof, would produce a good effect. Such discussion, in my opinion, will tend to remove from the minds of the members of the yamén misconceptions as to the character of this legislation, and if retaliatory measures were being considered—of which I have no information—it might cause a halt in the adoption thereof.

The reading of my answer to the grave charges made by the yamén will show that I have confined myself chiefly to making a legal argument.

Owing to the intimation already mentioned, contained in the Department's dispatch cited, I did not feel authorized to enter upon a discussion of the broad grounds upon which such legislation might be defended, nor did I feel authorized to enter into an effort to show that such legislation did not contravene Article II of the treaty, whereby certain rights and immunities were guaranteed to Chinese laborers who were in the United States at the date of the treaty.

As I have never received any instructions from the Department on this subject, it did not appear to me that it would be prudent to discuss the general relations of the two countries or to suggest remedies that might remove the unfortunate friction now existing. Your own wisdom and experience will suggest a general treatment of the questions involved, should such a policy be desired by you.

I have, etc.,

CHARLES DENBY.

[Inclosure 1 in No. 1569.]

The Tsung-li Yamén to Mr. Denby.

Peking, August 5, 1892.

Upon the 4th of July last the prince and ministers had the honor to receive a communication from the minister of the United States wherein he stated that he had received a copy of the new exclusion act against Chinese laborers, and inclosing in English—

First. A circular of the Secretary of the Treasury, informing collectors of customs of the passage and approval of the above-mentioned act.

Second. A copy of the above mentioned act, approved May 5, 1892.

Third. A copy of the act of Congress approved May 6, 1882.

Fourth. A copy of the act of Congress approved July 4, 1884.

Fifth. A copy of the act of Congress approved October 1, 1888.

The minister of the United States stated that these acts covered all the legislation of Congress on Chinese exclusion.

The prince and ministers would observe that it appears that the exclusion of Chinese laborers for a limited period had its origin in the 6th year of Kuang Hsii, tenth moon, 15th day, November 17, 1880, by a supplementary treaty concluded between China and the United States.

Afterwards, in 1882, the first exclusion act was adopted, which was very severe in its terms. In 1884 this act was revised and amended and it may be said that nothing was left to make it as strong as possible; still it was not clearly expressed as an abrogation of the treaty.

The law of October 1, 1888, was a complete discarding of the friendly relations that have existed between China and the United States for several tens of years.

The yamén and the Chinese minister to the United States have repeatedly addressed communications discussing the question upon the basis of the treaties, but the minister of the United States and the honorable Secretary of State has never sent anything of a decisive nature in reply.

The new act approved May 5 contains nine articles and continues in force, for a period of ten years, the law of 1884 on expiring of same (?). The prince and ministers, having duly perused the said act, feel it incumbent to explain to the minister of the United States their views regarding same.

Article II of the new act reads as follows:

"That any Chinese person or person of Chinese descent, when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country: *Provided*, That in any case where such other country of which such Chinese person shall claim to be a citizen or subject shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China."

The yamén does not know whether the term Chinese citizen or subject refers entirely to the laboring classes resident in the United States, or includes the exempt classes, as teachers, students, merchants, or those traveling from curiosity. By the second article of the supplemental treaty between the United States and China "Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to citizens and subjects of the most favored nation."

Section 3 of the act of 1884 is clear and explicit. It reads as follows: "That (the two foregoing sections) shall not apply to Chinese laborers who were in the United States on the 17th day of November, 1880, or who shall have come into the same before the expiration of ninety days next after the passage of the act." There is still further no necessity of discussing the question of Chinese merchants and others who are exempt and not included in the exclusion act.

By the act of May 5, 1892, the language used is Chinese citizen or subject, and no distinction of class is made. Again it is stated "under any of said laws to be not lawfully entitled to be or remain in the United States." Does the expression "under any of said laws" refer to the treaties or laws concluded by the two countries?

Again, by the third section of the new act, it reads:

"That any Chinese person, or persons of Chinese descent, arrested under the provision of this act, or the acts hereby extended, shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States."

The yamēn would observe that it was originally under the provisions of the Burlingame treaty of 1868 that Chinese laborers migrated to the United States. If affirmative proof is asked for this treaty should be taken, as it is certainly real affirmative proof.

Sections II and III of the supplemental treaty of 1880 may also be cited as including affirmative proof.

The United States Government at present disregards the treaties, and is moving with force to arrest Chinese subjects. Such action the prince and ministers consider as appearing to be greatly at variance with the Constitution of the United States.

Section IV refers to imprisonment at hard labor. The prince and ministers would inquire whether the laboring classes of other countries, who go to the United States, are treated in such a harsh and tyrannical manner. Can it be said that they enjoyed the same rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation?

Section V reads: "That after the passage of this act, on an application to any judge or court of the United States in the first instance for a writ of habeas corpus by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed, and such application shall be heard and determined promptly without unnecessary delay."

It appears that there is a rule or law in the United States which admits of the citizens and subjects of foreign powers, resident in the United States, when an action at law has been instituted against them before the courts to apply and obtain bail pending the trial of the case.

If the granting of bail is to be denied Chinamen awaiting trial, then where will their dwelling places be? Besides it is certainly the case that judges or justices can not take up [every] case on their arrival in court. In a word the true and honest procedure would be to still conform to the rule to grant bail pending trial.

Section VI of the new law reads as follows:

"And it shall be the duty of all Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collectors of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence, and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage thereof, shall be found within the jurisdiction of the United States without such certificate of residence shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as hereinbefore provided, unless he shall establish clearly to the satisfaction of such judge that by reason of accident, sickness, or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and if upon the hearing it shall appear that he is so entitled to a certificate it shall be granted upon his paying the cost. Should it appear that said Chinaman had procured a certificate which has been lost or destroyed he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of such arrest and trial shall be in the discretion of the court. And any Chinese person other than a Chinese laborer, having a right to be and remaining in the United States, desiring such certificate as evidence of such right may apply for and receive the same without charge."

The yamēn would observe that Chinese laborers, resident in the United States, are scattered about in cities and towns where China is not represented by consular officers. Among this class of laborers there are some who do not speak or read English, and if they must provide certificates within the limited period of one year, and, on a failure to do so they will be arrested and brought before the courts for punishment, it goes without saying that they will become involved into a great deal of trouble, and it is to be feared the local authorities will be excessively annoyed and bothered and in comparison with the articles of the supplemental treaty of 1880 (the new act) contains much more matter.

As to section 7, 8, and 9 of the new act, these refer to the rules and regulations the Secretary of the Treasury of the United States shall make, and on examination with the rules issued by the Secretary of the Treasury, dated December 6, 1884, it appears are greatly at variance therewith.

In the matter of the above new act, which contains nine sections, the yamēn have examined the treaties as well as the cases that have transpired, and the prince and ministers would request the United States minister to memorialize the President of the United States to instruct Congress to reconsider the recent exclusion act, so that

it may be in due observance of international law, and thus show a feeling of regard for the relations of the two countries.

It appears that after the act of July, 1884, was passed by Congress the President of the United States at that time sent to Congress, on the 1st of December of that year, a message wherein he called attention to the supplemental treaty between the United States and China, and stated that in the action taken with regard to the exclusion of Chinese for a certain period the original intent and purpose of the treaty should be considered, and that it seemed necessary to again deliberate upon the question in a satisfactory and proper way, the previous bill being a violation of treaty, the terms of which should be carefully amended.

The President of the United States has authority, when Congress decides and enacts a law in violation of treaty rights, to (return the same) and request a reconsideration of it. The act of May 5, 1892, containing nine sections, is in many respects a violation of the treaties, and is merely a continuation of the old exclusion acts of 1884 and 1882, and the evil reached the members of the Chinese diplomatic service, for in 1886 the Chinese minister accredited to the United States was not allowed to land in San Francisco until he had showed his credentials, which was demanded by the (commissioner) collector of customs.

These acts have injured the reputation of the Government of the United States, as well as the friendly relations that have existed between the two countries, and the yamén expresses the hope that the Government of the United States will, in an equitable and satisfactory manner, rectify the discrepancy shown against China in the unfair treatment manifested toward the Chinese subjects.

The prince and ministers beg that the minister of the United States will peruse this communication and favor them with a reply.

A necessary communication addressed to his excellency, Charles Denby.

[Inclosure 2 in No. 1569.]

Mr. Denby to the tsung-li yamén.

LEGATION OF THE UNITED STATES,
Peking, August 18, 1892.

YOUR HIGHNESS AND YOUR EXCELLENCIES: I have the honor to acknowledge the receipt of your communication of the 5th instant, relative to the Chinese exclusion acts of the United States. You therein desire me to bring your criticisms and objections to the attention of the President of the United States, in order that a remedy may be provided for the unjust manner, as you allege, in which Chinese subjects have been treated.

I will, with great pleasure, send to the Department of State a translation of your communication. After having received instructions I will communicate with your highness and your excellencies further.

I beg to remark, however, that article 1 of the treaty of 1880 contains the express consent of China that the coming of Chinese laborers to the United States "or their residence therein," whenever, in the opinion of the Government of the United States, such coming or residence "affects or threatens to affect the interests" of the United States, or to endanger the good order thereof, or any part thereof, may—both coming and residence—be regulated and suspended.

So far as the legislation of Congress applies to Chinese laborers who have entered the United States since the act of May 6, 1882, was enacted, there can be no question that such legislation is in accordance with the provisions of the treaty. As to whether laborers who were lawfully in the United States prior to May 6, 1882, have been deprived of any right guaranteed by the second article of the treaty may not at all be a practical question. It would be necessary to ascertain how many such laborers there are, if any, where they reside, and in what manner they are, or claim to be, injured. After this lapse of time, and with the known inclination of such persons to return to China, my opinion is that few of this class will be found in the United States.

I propose now to show that the recent act of Congress is perfectly in accord with the Constitution of the United States. The following is a brief abstract of this law:

The first section simply continues in force existing laws for ten years.

It is to be noticed that this is not prohibition, but regulation, limiting, and suspending, and therefore in accord with the treaty.

Second section. This section provides for the removal to China or, in certain contingencies, to other countries, of Chinese laborers who are found to be unlawfully in the United States. No argument is necessary to justify this section. Removal is both a mild and necessary form of punishment.

Third section. This section requires affirmative proof of the right to remain in the United States to be made by an accused person.

Usually in legal proceedings neither party is required to prove a negative. It would or might be impossible for the Government to prove the time when and the place where an alien entered its territory, but it is exceedingly easy for the accused to prove the facts as they are in his own knowledge. Generally, a person claiming that he has a license to do a given act must produce his license.

Fourth section. This section fixes a penalty of one year's imprisonment for unlawfully entering the United States.

In my opinion, this clause is not retroactive, but applies to those persons only who have entered or shall unlawfully enter the United States after May 5, 1892.

Fifth section. This section denies the privilege of giving bail to persons who have sued out a writ of habeas corpus.

While under the Constitution (clause 2, sec. 21, 2d Ed. Rev. Stat., 1878) this writ must issue, except in certain cases, there is no clause in the Constitution providing in what cases bail is admissible. The power of determining what cases shall be bailable, and what not, is left to Congress. In this case Congress has chosen to deny bail. It was influenced, no doubt, by the fact that in many cases bail bonds proved to be worthless.

Sixth section. This section requires all Chinese laborers to take out a certificate of residence. Easy means are provided for the issuing of such certificates. If sickness or other good cause prohibited the securing of a certificate, that fact may be proved and time given to secure one; so if a certificate has been lost.

There is no peculiar hardship in this system. It is something like the passport and travel-certificate system prevailing in China. It will prove a benefit instead of an injury to the laborer. The production of a certificate at any time will relieve him from all trouble.

Seventh, eighth, and ninth sections. These sections are not material to this discussion. They provide for rules to be made to put the act in operation, for penalties for forgery, and compensation to officials.

Your highness and your excellencies say that you do "not know whether the term Chinese citizen or subject refers entirely to the laboring classes resident in the United States, or includes the exempt classes," etc.

The act of May 5, 1892, continues in force the proper acts, of which copies were sent to you.

The act of May 6, 1882, is the first of these acts. Its language is "the coming of Chinese laborers to the United States" is suspended.

The act of 1884 amends the act of 1882 and adopts the same language.

The act of October 1, 1888, enacts that "it shall be unlawful for any Chinese laborer" to return to the United States after having departed therefrom.

All these laws, therefore, apply to Chinese laborers and simply provide as to other classes a mode of identification.

Your highness and your excellencies further observe that it was originally under the provisions of the Burlingame treaty of 1868 that Chinese laborers migrated to the United States, and that this treaty constitutes affirmative proof, as required by the third section of the act of May 5, 1892.

The treaty has no bearing on the proof of the time when a laborer went to the United States. This date must be proved, and if a Chinese laborer was a resident of the United States prior to May 6, 1882, he will not be affected by any of this legislation, provided he takes out a certificate of residence.

Your highness and your excellencies state that the penalty of imprisonment affixed by section 4 is excessive and that laborers of other countries are not liable to such punishment.

It was for Congress to determine what the punishment for an infraction of this law should be. It has named the lowest penalty that is usually attached to crimes. That laborers of other countries are not liable to such punishment may be true, but the United States has no treaty similar to the treaty of 1880 with any other power.

I have already discussed the effect of section 6 of the new law, which relates to the refusal of bail on application for a writ of habeas corpus. I do not know where persons who had sued out a writ of habeas corpus would stay before trial. I suppose in practice, if they could not remain aboard the ship which transported them to the United States, some other place would be provided by the authorities.

In what I have written I have treated the questions involved as questions of law. It does not come within the purview of the diplomatic officer to discuss the intrinsic merits or demerits of the laws of his country. I beg to remark, however, that if the treaty of 1888 had been approved by the Government of China the questions now mooted would not have arisen. China at that time seemed to fear that if that treaty were approved similar treaties would have to be conceded to other powers. She preferred that her people should be prevented from going to the United States by an act of Congress which she might designate as antitreaty legislation to their

being excluded from other parts of the world by her own consent. The danger of this policy was pointed out by me at the time, and events have justified my remonstrance.

I avail, etc.,

CHARLES DENBY.

No. 15.

Mr. Tsui to Mr. Foster.

CHINESE LEGATION,
Washington, November 7, 1892.. (Received November 7.)

SIR: In compliance with instructions from the Imperial Government, and also in answer to the prayers of numerous petitions received from Chinese residents of the United States, it again becomes my duty to call your attention and the attention of the President of the United States to the unjust, unfair, and discriminating legislation of the Congress against my countrymen, which has been enacted regardless of their vested rights and in violation of the solemn treaty stipulations now in force between the Imperial Chinese Government and the Government of the United States.

In my communication to your predecessor of March 26, 1890 (in which I referred to communications of my predecessor of January 26, 1889, and July 8, 1889, upon the same subject), there was a full discussion of the provisions of the act of Congress approved October 1, 1888, and to which reference is now made, with the request that the argument and presentation of the question therein may be read and considered as a part of this note.

On October 1, 1890, not having heard from your predecessor in response to my note of March 26, 1890, I was impelled by an urgent sense of duty to transmit another note to the Department of State requesting attention to former communications, and asking that I might be favored as promptly as possible with the views and intentions of the Government of the United States in regard to the difficulties which had then unhappily arisen, and which still continue to exist between our nations.

On the 6th day of the same month Mr. Secretary Blaine replied in a most courteous note, explaining the delay, etc., and then said: "The questions which you present have been, and now are, the subject of careful consideration on the part of the Government, and I hope to be able at an early day to convey to you the views of the President in an ample and formal manner."

The promised views and intentions of the President had not been received on December 4, 1890, and I again addressed the Department of State upon the subject, and set forth in my note of that date the objections of my Government to the act of Congress approved October 1, 1888, and the desire of the tsung-li yamén that it should have been repealed before the adjournment of Congress, or modified in such manner as to avoid the hardships that would befall my countrymen by its enforcement, and preserve, with honor to both nations, the treaty stipulations so solemnly entered into between them; and that my Government had been greatly disappointed to learn of the adjournment of Congress without any action whatever. I also stated in a general way the effect of the law upon the business interests of my countrymen who were, most of them, innocently and without any knowledge of the existence of such a law, brought within its unjust provisions.

Other notes were transmitted to the Department of State upon the same subject, and when I had occasion to make personal calls at the Department, I reminded the Secretary of State of the fact that I had not received the promised communication expressing in a formal manner the views and intentions of the President in relation to the exclusion legislation of Congress of October 1, 1888. The promised views and intentions of the President had not been received when Congress again convened in December, 1891, and numerous bills were introduced in both Houses of Congress upon the subject of the exclusion of the Chinese from the United States. It may not be out of place to remark here that the object of the introduction of these bills is well understood in both China and the United States.

On April 11, 1892, in the absence of the Secretary of State, I called on Assistant Secretary Wharton and informed him that I had received a cablegram from the tsung-li yamēn in regard to the passage by the House of Representatives of what was known as the Geary bill, which was harsher and more objectionable in its terms than any bill that had previously passed either House of Congress, and violated, in my opinion, every important provision of the treaty of 1880. The substance of the cablegram was communicated to Mr. Wharton, who, in answer to my inquiry as to what course I should adopt, advised me to send a note to the Department setting forth the views of the Imperial Government, and he stated that a copy of such note would be transmitted to the Committee on Foreign Relations of the United States Senate, the committee that would then have the House bill under consideration.

On the next day, April 12, 1892, I presented and filed in the Department of State such a statement as was suggested by Mr. Wharton, in which will be found the objections of my Government to the bill and cogent reasons against its enactment into a law.

On April 21, 1892, I advised the Department of State of the receipt of a second cablegram from the tsung-li yamēn upon the same subject, in which I was instructed to urge upon the Secretary of State the importance to both governments of the preservation of the existing treaty stipulations, which the pending legislation threatened to destroy, and repeated my earnest desire that the Secretary of State would do everything in his power to avert the menaced violations of the treaties by the Congress of the United States.

But, notwithstanding my protests against the proposed legislation, on behalf of my Government, the Geary bill was amended by the Senate Committee on Foreign Relations and passed. The amended Senate bill was too liberal in its provisions for those who had proposed the legislation in the House, and when it reached that body the amendments were nonconcurred in and conferees appointed. The conference committee reported the bill, which was approved May 5, 1892, but not unanimously, inasmuch as some of the ablest of that committee declined to agree to or to sign the report and opposed its adoption by forcible arguments. The report of the conference committee was, however, adopted in both the Senate and House, and the bill transmitted to the President for his signature.

Under this alarming state of affairs I again addressed a note to the Department of State, renewing the protests and objections to the legislation, insisting that the treaties between the governments should be preserved, and asked the Secretary of State to lay before the President of the United States my most urgent protests for his consideration before he should act upon or give his approval to the bill. I respectfully refer you to said note for my views upon the effect of such legislation

and for a brief statement of the hardships imposed upon my countrymen in the United States by its unjust and personal provisions, which apply to them alone as a class of people, most of whom are legitimate residents of the United States and entitled to the same protection, privileges, immunities, and exemptions as other residents therein of the most favored nations. But my protest, if considered by the President at all, was disregarded, and on May 5, 1892, the bill received his approval and became a law.

Subsequently to the approval of the act another note was sent to the Department, in which I again expressed my views upon this important question.

The above is a review of the correspondence between the Secretary of State and myself upon the subject now under consideration up to this date, and it is scarcely necessary to remark that the same is decidedly one-sided.

I regret most sincerely that I am compelled to say, in a most friendly way, that the proceedings which led to this legislation and the laws enacted in pursuance thereof were not required by any existing emergency that had arisen between the two nations, and the harshness of the provisions of such laws and the admitted violation of the existing treaties between the governments were unjustifiable, and the course of Congress in this respect can not be justified by anything to be found in the status of China and the United States toward each other at the time.

The important observation may be made here that the haste in which bills relating to the exclusion of Chinese are rushed through Congress presents a most deplorable aspect of the question now under discussion. The act of October 1, 1888, known as the Scott law was, I believe, passed without reference to committee, without debate, and without any sort of consideration whatever. At the last session of Congress each House hastily passed bills which crossed each other in the proceedings, and out of which the act approved May 5, 1892, was finally agreed upon in conference and enacted into a law. The Geary bill, which contained most obnoxious provisions, in connection with which there was a minority report in the House, was stricken out in the Senate and the Dolph bill substituted for it and passed, upon which a conference committee was appointed, and the result of their deliberations was the act approved May 5, 1892, as above stated.

In section 13 of the Geary bill, as it passed the House, will be found the following language:

SECTION 13. That immediately after the passage of this act the Secretary of the Treasury shall make such rules and regulations and prescribe the necessary forms to enable the Internal-Revenue Department of the Government to issue the certificates required hereby. Such certificates may be issued by the deputy commissioner of internal revenue nearest the place where such Chinese resides. The certificates shall contain a true photographic copy of the applicant, together with his name, age, local residence, and occupation, and a duplicate of the same shall be filed in the office of the commissioner of internal revenue of the district within which such Chinaman makes application.

The section of the act approved by the President May 5, 1892, is a modified one, and reads as follows:

SECTION 7. That immediately after the passage of this act the Secretary of the Treasury shall make such rules and regulations as may be necessary for the efficient execution of this act, and shall prescribe the necessary forms and furnish the necessary blanks to enable the collectors of internal revenue to issue the certificates required hereby, and make such provisions that certificates may be procured in localities convenient to the applicants. Such certificates shall be issued without

charge to the applicant and shall contain the name, age, local residence, and occupation of the applicant, and such other description of the applicant as shall be prescribed by the Secretary of the Treasury, and a duplicate thereof shall be filed in the office of the collector of internal revenue for the district within which such Chinaman makes his application.

It is conceded that the Imperial Government has not encouraged the emigration of its people from China to the United States, but, on the contrary, in the negotiations between the countries on the subject it has, in the most friendly manner, yielded to the suspension of emigration, and more friendly treatment was anticipated, therefore, than has been manifested by Congress in the enactment of laws prohibiting the coming of Chinese into the United States.

It was admitted in the debate at the last session of Congress that the passage of the Scott law in 1888 was a violation of the treaty stipulations between the two countries, and also that the passage of the act of May 5, 1892, was a second and more aggravated violation of the same.

For a proper characterization of the legislation by eminent statesmen you are respectfully referred to the debates found in the Congressional Record, first session. From these debates it will be seen that some of the most prominent members of the Senate Committee on Foreign Relations doubted the necessity of any legislation whatever in the last session of Congress and were of the opinion that the provisions of the act of 1888 were extended to 1894.

I will also add that it was disclosed by these debates that the census shows a decrease in the number of Chinese in the State of California and in the United States, and there was, therefore, no actual reason or necessity for the passage of a law containing additional precautions and restraints against the coming of my countrymen into the United States.

I might with propriety protract this communication by placing before you in detail the numerous hardships that will be entailed upon my people in the United States if the law is allowed to remain unchanged and if the rules and regulations prescribed by the Treasury Department are sustained and enforced; but these matters are apparent, and will be fully understood by a casual reference to them.

The provisions of the act of May 5, 1892, I am informed, contravene the Constitution of the United States; it is admitted they violate the treaties between China and the United States. Grave questions as to the constitutionality of the act will arise, therefore, for consideration, but inasmuch as these are questions to be presented to another and coördinate branch of your Government I shall not discuss them in this communication, and this reference is made to the subject for the purpose of leading up to the presentation of an important departure in the legislation of the Congress of the United States. This departure is found in section 6 of the act. The crime defined in this section and the punishment prescribed are plainly *ex post facto*, notwithstanding the law has been ingeniously framed with the intention of avoiding its repugnance to the Constitution. But I desire to direct attention more especially to the fact that the Congress has prescribed as a punishment for the noncompliance with the law what is equivalent to banishment from the United States; and I wish to emphasize the fact that this punishment is applicable only to my countrymen. It was surprising to the Imperial Government to find engrafted in the law of the United States any such penalty, especially so when it has been proclaimed throughout the world for over one hundred years that the United States was an asylum for the people of all the nations of the earth.

In my surprise, I naturally exclaim, is this a step backward from progress, civilization, freedom, and liberty? I can not find words to express my regret or the regret of the Imperial Government at the enactment of such a law, which is applied solely and personally to the Chinese, a large majority of whom are unquestionably lawfully within the United States, engaged in the legitimate pursuits of life and entitled to the protection of the Constitution and laws, instead of the imposition of such punishment as it is attempted to inflict upon them by the last Congress; and the surprise must be greatly enhanced when it is considered that such obnoxious and unenlightened punishment is an unwelcome salute from one friendly and favored nation to another, which has at all times and under all circumstances made amity, honesty of intentions and purposes, and the sacred preservation of its treaty stipulations the chief object in its relations with the United States Government. For these reasons, and others heretofore adduced, the statute of 1892 is a violation of every principle of justice, equity, reason, and fair dealing between two friendly powers, and its enforcement should not only be arrested, but the law itself should be summarily repealed or so altered as to assure my countrymen of the full protection of their rights and immunities, in the same measure that these privileges are secured to the people of other favored nations who are in any manner residing within the boundaries of the United States.

In accordance with what has already been stated, I would most respectfully suggest that the two nations might be relieved of the pending embarrassments which are the immediate result of the legislation so frequently referred to in this note by a repeal of the objectionable provisions of the act of May 5, 1892, or such alteration of the same as will protect my countrymen in their vested personal and property rights in the United States, so that they may continue to remain in said country free from the threatened difficulties, wrongs, and the deprivation of such rights and privileges.

In consideration, therefore, of the past friendship between the respective nations and in the hope of preserving the same and uniting them more firmly therein, I again communicate to you the respectful request of the Imperial Government that the matters which form the basis of this and my former notes may receive your early attention, and that the views and intentions of your Government may be elicited and made known to me in an "ample and formal manner."

I again renew, etc.,

TSUI KWY YIN.

No. 16.

Mr. Tsui to Mr. Foster.

CHINESE LEGATION,

Washington, Nov. 11, 1892. (Received November 12.)

SIR: I have the honor to transmit herewith for your consideration, and for the consideration of his excellency the President of the United States, a communication of the foreign office at Peking, and addressed to Hon. Charles Denby, United States minister, in reply to a note from him dated July 4, 1892, inclosing for the information of the Imperial Government a copy of the act of Congress approved May 5, 1892, and former acts, prohibiting the coming of the Chinese into the United

States; also a translation into the Chinese language of the circular letter issued by the Secretary of the Treasury to the collectors of customs in the United States.

The drastic provisions of the act of Congress of May last are reviewed by the foreign office in this note to Minister Denby and accompanied with the request that such provisions may be explained and construed, especially in the many particulars referred to therein.

It will be observed that Minister Denby is also requested to lay the matter mentioned in the note before the President of the United States, with a prayer that his excellency will cause the late act to be reconsidered by the Congress of the United States, to the end that due regard may be paid to the law of nations and to the friendly intercourse between China and the United States.

I most respectfully ask your careful consideration of the communication inclosed, and request that an answer may be made to all the inquiries presented by the foreign office. And I hope I may be pardoned for asking for a response to my note of recent date, as well as to the former notes of myself and my predecessor.

Accept, etc.,

TSUI KWY YIN.

[Inclosure.]

Translation of reply of foreign office in Peking to Mr. Denby, the United States minister.

SIR: We have the honor to acknowledge the receipt of your note, dated July 4, 1892, informing us of your having received from your Government copy of a new act prohibiting the coming of Chinese laborers into the United States, and transmitting for our information a Chinese translation of the circular letter issued by the Secretary of the Treasury to the collectors of customs in the United States, accompanied by the original in English, which contains (1) the new act of May 5, 1892; (2) the act of May 6, 1882; (3) the amendatory act of July 5, 1884, and (4) the act of October 1, 1888.

Legislative measures restricting the immigration of Chinese laborers into the United States received their first sanction from the treaty concluded between China and the United States on the 17th of November, 1880. Subsequently an act was passed by your Congress in 1882 restricting and limiting the immigration of Chinese laborers, the provisions of which are very strict and oppressive. In 1884 your legislators passed an act amendatory to the act of 1882, exercising their power and using their discretion to the fullest extent; still they did not go so far as to openly violate treaty stipulations. But at last, on October 1, 1888, an act was passed regardless of the firm and cordial friendship between the two countries which had existed for decades of years.

We and our ministers at Washington have repeatedly sent in our protests in accordance with the treaty stipulations, but have received no reply from you or the State Department. Furthermore, a new act, consisting of nine sections, was passed and approved May 5 last, continuing the provisions of the amendatory act of 1884 for a period of ten years from its passage. This being the case, we have no alternative but to call your attention to the following objections: Section 2 of the new act says: "That any Chinese person or person of Chinese descent, when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country: *Provided*, That in any case where such other country of which such Chinese person shall claim to be a citizen or subject shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China." Does the clause "Chinese person or person of Chinese descent" mentioned in this section apply only to Chinese laborers residing in the United States, or to the exempt class also, such as teachers, students, merchants, or persons visiting the United States from curiosity? We should be glad to have some explanation regarding it.

Article 2 of the treaty of November 17, 1880, provides that "Chinese subjects, whether proceeding to the United States as teachers, students, or merchants, or from

curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation."

Section 3 of the amendatory act of 1884 provides "that the two foregoing sections shall not apply to Chinese laborers who were in the United States on the 17th day of November, 1880, or who shall have come into the same before the expiration of ninety days next after the passage of the act to which this act is amendatory." Thus it is clear that the first two sections of the said act can, under no circumstances, be applicable to Chinese merchants and others who belong to the exempt class. Now, the new act of May 5 last refers generally to Chinese persons without classifying them. Does the clause "to be or remain in the United States" mean that it is a law made and agreed to by both the nations, by which a Chinese person is to be adjudged lawfully or unlawfully to be or remain in the United States?

Section 3 of the new act says: "That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States, unless such person shall establish by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States."

We hold that by the Burlingame treaty of 1868 the right of Chinese laborers to emigrate to the United States is secured and provided for; also by articles 2 and 3 of the treaty of 1880. What more affirmative proof can your Government ask for? Now, this arbitrary assumption of power by your Government in causing the arrest and punishment of Chinese subjects without regard to the binding force of treaty stipulations appears to be in direct conflict with the Constitution of the United States.

Section 4 of the same act provides for the punishment of Chinese persons, when convicted of being unlawfully in the United States, with imprisonment at hard labor. Let us ask whether the subjects of other nations who are laborers in the United States receive the same treatment. How can you reconcile your Government's action in the matter with that clause in the treaty which provides that to Chinese subjects shall be accorded the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation?

Section 5 of the same act has the following provision: "That after the passage of this act, on an application to any judge or court of the United States, in the first instance, for a writ of habeas corpus by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed, and such application shall be heard and determined promptly without unnecessary delay." According to the practice of your courts, defendants in bailable cases, though they are subjects of other nations, are entitled to the privilege of being released on bail. If Chinese subjects are refused bail, where shall they be lodged? In ordinary proceedings it is impossible for any judge to take up and hear a case as soon as it is brought before him and determine it promptly. It is therefore hoped that the privilege of being allowed to give bail hitherto enjoyed by the Chinese subjects may be continued.

Section 6 of the said act provides: "That it shall be the duty of all Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence, and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States as hereinbefore provided, unless he shall establish clearly to the satisfaction of said judge that, by reason of accident, sickness, or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and, if upon the hearing it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost. Should it appear that said Chinaman had procured a certificate, which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court. And any Chinese person other than a Chinese laborer having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge."

On inquiry, we find that Chinese laborers are scattered over the United States. They are to be found in cities where no Chinese consulate has been established to look after their interests. Most of them can not understand and speak the English language. If they are compelled to apply for a certificate of residence within a year from the passage of the act and are liable to arrest and punishment in case of their failure to comply with the law, Chinese residents in the United States will certainly suffer uncalculated misery and hardships; but the local authorities will likewise find the work of carrying out the law quite burdensome. The above requirement is in contravention of the spirit of the treaty of 1868.

Sections 7, 8, and 9 define the duties of the officials of the Treasury Department, who are charged with the execution of the act, which seem to differ greatly from the requirements of the amendatory act of July 5, 1884.

Having carefully studied the provisions of the treaties existing between the two countries and the understanding reached in the determination of past cases, and compared the same with the nine sections of the new act, we deem it our duty to request you to lay the matter before the President of the United States for his consideration, with a prayer that his excellency will cause the new act to be reconsidered by the Congress of the United States, to the end that due regard may be paid to the law of nations and to the friendly intercourse between the two countries.

Shortly after the passage of the act of July 5, 1884, the President of the United States, in his message to Congress of December 1, 1884, observed that it was necessary for that august body to expound the exact sense and meaning of the words employed in the treaty in relation to the restriction of the Chinese immigration to the United States, and that, as he considered the amendatory act passed by Congress was in contravention of treaty stipulations, he considered it proper to ask Congress to carefully review it and modify some of its provisions. Thus it is evident that, if Congress passes a bill in violation of any treaty stipulation, the President of the United States has the power to ask that body to reconsider its action. Now, most of the nine sections of the new act which continue in force the laws of 1882 and 1884 are undoubtedly in conflict with treaty stipulations and affect Chinese diplomatic officers also. It will be remembered in the year 1886 an unpleasant incident took place, which was occasioned by the collector of customs at San Francisco demanding the production by the minister of his credentials upon his arrival before he was permitted to land. Such action reflects on the honor of your nation and is detrimental to the friendly relations between the two countries. We sincerely hope that your Government, guided by a sense of justice and equity, will discontinue its policy of discrimination against China and its ill treatment of Chinese subjects.

We await the favor of a reply.

Accept, sir, etc.

No. 17.

Mr. Denby to Mr. Foster.

No. 1607.]

LEGATION OF THE UNITED STATES,
Peking, November 29, 1892. (Received January 14, 1893.)

SIR: In my dispatch, No. 1569, of the 18th of August last, I transmitted a copy of a translation of a communication received by me from the foreign office, relating to the recent exclusion acts of the United States against Chinese laborers, together with a copy of my reply thereto.

I now inclose a translation of another communication from the yamén on the same subject. The yamén states that several months have elapsed and it has received no intimation from me whether I have or have not received a reply from the honorable Secretary of State. The yamén proceeds to state that ~~we~~ has received from Chinese in the United States frequent remonstrances against the new law, and that arrests under it have been made in New York. This latter statement, I think, can not be true, as the law has one year to run from May 6, 1892, before prosecutions can begin.

The yamén then argues at considerable length that the new law violates the treaty of 1880. It cites the "favored nation" clause in that

treaty and the third article thereof, and claims that, as the matter of certificates under the new act does not apply to the citizens of other countries, it should not apply to Chinese subjects.

I endeavored in my communication to the yamén of August 18, 1892, to show that the new law was not in contravention of the treaty of 1880, so far as it related to Chinese laborers who have gone to the United States since the treaty of 1880, because such persons had gone thither in violation of the acts of 1882 and 1884. But the yamén makes no distinction between Chinese laborers who were in the United States at the date of the treaty and those who have since unlawfully gone to the United States. The yamén then points out the difference between the system of certificates and the passport and travel-certificate system prevailing in China, and claims that the two systems are not at all alike.

The yamén proceeds to speak kindly of the Government of the United States and of myself, and expresses the hope that you will request Congress to abrogate the new law. It concludes with the statement that it has addressed the governor of the Liang Kuang (the two southern provinces) to ascertain the views of the Chinese merchants of Canton and Hongkong, and, on a report having been received, the question of making new rules for the future will be considered.

I have acknowledged the receipt of this communication, and have informed the yamén that I have not received any specific instructions on the subject under discussion.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 1607.—Translation.]

The Tsung li Yamén to Mr. Denby.

No. 17.]

NOVEMBER 24, 1892.

Upon the 18th of August, 1892, the prince and ministers had the honor to receive a communication from the minister of the United States, in reply to the yamén's dispatch relative to the exclusion acts of the United States against Chinese laborers, wherein the minister of the United States was requested to bring the attention of the President of the United States to the unjust manner in which Chinese subjects have been treated. The minister of the United States stated that it would afford him great pleasure to send to the Department of State a translation of the prince and ministers' communication, and, after having received instructions, he would communicate with the yamén further upon the subject.

The yamén have duly perused the contents of the minister's communication, which contains in substance the provisions of the supplemental treaty and also gives a review of the nine articles of the new act of May 5, 1892, which are in accordance with treaty stipulations. The minister of the United States further observes that if the treaty of 1888 had been approved by the Government of China, the questions now mooted would not have arisen, and the danger of the policy adopted was pointed out by him at the time.

Several months have elapsed, but the prince and ministers have received no intimation from the minister of the United States whether he has or has not received a reply from the honorable Secretary of State. Frequent representations have been made by Chinese resident in America that the rule under the new law in regard to getting certificates is oppressive. In New York the police have arrested at their pleasure Chinese who have not obtained certificates. The Chinese minister to the United States has laid the matter before the yamén by note, and the yamén must lose no time in devising a plan of action.

With reference to the limitation of Chinese laborers, there is a special treaty governing the question. The minister of the United States states that laborers of other countries are not liable to such punishment, which may be true, but the United States have no treaty similar to the treaty of 1880 with any other power.

The yamén would observe that when the supplemental treaty of 1880 was negoti-

ated, the commissioners appointed by China to negotiate the same inquired of the United States commissioners that, on the framing of the treaty, whether the United States would or would not impose or inflict oppressive measures on the Chinese laborers, and, after the return to the United States of the American commissioners, this statement of the Chinese commissioners appeared in the foreign relations of Congress.(?) This treaty was concluded in an amiable and peaceful spirit, and the two Governments concerned were animated by the desire of pursuing perpetual friendly relations.

The second article of the treaty reads as follows:

"Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation."

If the statement of the minister of the United States, "that laborers of other countries are not liable to such punishment," is to be taken, then was not the expression in the treaty of 1880, "accorded all the rights, etc., which are accorded to the citizens and subjects of the most favored nation," an empty and vacant insertion? If the two countries, China and the United States, are only and specially to be considered, what was the use of inserting the favored-nation clause?

The third article of the supplemental treaty reads:

"If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its power to devise measures for their protection and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens and subjects of the most favored nation and to which they are entitled by treaty."

Here is a repetition in this clause that Chinese [subjects] shall receive the same treatment as those of the most favored nation. As the rules of action in the matter of certificates under the new act can not apply to other countries, then they can not apply to Chinese subjects.

The minister of the United States takes the supplemental treaty between the United States and China, of 1880, and cites that as the authority why the Chinese laborer only should receive such harsh and unfair treatment. It seems this was not formerly the intent when the treaty was framed, neither is it in accordance with the wording thereof.

The minister of the United States further remarks that "it [a certificate] is something like the passport and travel-certificate system prevailing in China." This view the yamen really do not understand. With regard to foreigners resident in China applying for passports, these documents are either applied for by the foreign minister or consul, by an official communication (to Chinese authorities), and each receives the same treatment. The police authorities have never compelled persons to take out passports, nor is there any such thing as punishment by imprisonment. Further, the object and purpose of foreigners getting passports are specially for traveling in the interior. At the treaty ports, however, foreigners may go and come at their pleasure without these documents.

Generally speaking, there is no nation that is pleased with having the name of violating treaty stipulations. Every confidence has long been reposed in the sincerity of purpose, integrity, and high standing of the Government of the United States, and it has always evinced the staunchest feeling of friendship toward China. The minister of the United States has resided in China many years, and the relations between him and the yamen have always been above suspicion; but at present the Chinese residents in the United States are molested and persecuted to an unsurpassed extent, and the yamen hopes that the minister of the United States will address and urge the Secretary of State to bring the matter before Congress to have abrogated the new law of 1892 regarding the issuance of certificates, thus maintaining and preserving the friendly relations between the two nations, which is the earnest desire of the yamen.

As to what rules may be arranged for the future, the yamen have addressed the governor-general of the Liang-Kuang, to ascertain the views of the Chinese merchants of Canton and Hongkong, and, on a report having been received, the question will then be considered.

A necessary communication, etc.

No. 18.

*Mr. Wharton to Mr. Tsui.*DEPARTMENT OF STATE,
Washington, December 10, 1892.

SIR: I have the honor to acknowledge the reception of your two notes of the respective dates of November 7 and November 11, 1892, concerning the recent legislation of the Congress of the United States "in respect to Chinese subjects" in this country.

In the former of these two notes you refer to certain unanswered notes of your predecessor and of yourself as containing a full discussion of the provision of the act of Congress approved October 1, 1888. That statute was brought about by the regrettable failure to complete the treaty signed at Washington March 12, 1888. It does not seem necessary at this late date to discuss the circumstances under which the treaty of 1888 failed, or to conjecture whether, had it been duly perfected, it would have served to avert the difficulties or meet the issues which have since arisen. That the failure of that treaty, through the withholding of the Imperial ratification, exerted a prejudicial influence upon American sentiment thereafter is hardly open to doubt.

Neither does it seem necessary to the present object to enter into a full historical and analytical review of the variant conditions which have existed in the United States and China since the first treaties were signed in regard to the treatment of aliens. It would not be difficult to show that from the outset the position of the foreigner in China has been one of violation and exclusion, his rights being limited under treaties to certain specified objects within the narrow limits of the treaty ports, and extended only at the will of the Chinese Government to residence and travel in the interior. The foreign states, by their compacts with China, have impliedly recognized the inherent right of that Empire to regulate the domicile and business of aliens within its borders, by soliciting and obtaining from China the limited privileges expressed by the formal treaties and the expanded privileges growing out of them. Nor would it be difficult to argue with convincing force that the application of this right by China is governed in its manifestations by the inherent immiscibility of the Mongolian and Caucasian races. As are all Europeans to the native Chinese communities, so are the Chinese to the communities of European blood—a people apart, not willing to be engrafted upon the national life, and dwelling under the special license of an artificially created necessity.

You and your predecessors have pointed to the exclusive and repressive treatment of Chinese in the United States and to the acts of lawlessness from which they have suffered. It would be easy to offset this phase of the argument by a recital of the multiplied instances wherein citizens of the United States peaceably dwelling or traveling in China have been the victims of mob violence and of vexatious aggression on the part of the local authorities; but I fail to see the good to flow from such a line of discussion, since the Governments of China and the United States have been alike sincere in their expression of abhorrence for such acts, and practical in their disposition to proffer suitable amends. To pile up past causes of grievance on either side would but embitter the temperate examination of present problems, which I am sure it is the wish of your Government, no less than of my own, to give to the subject.

Reserving, therefore, all considerations of these aspects of the general

question, I confine this communication to the precise points you make touching the recent legislation of Congress renewing the acts passed for the execution of the treaty of 1880. Those acts being limited in their effects to a fixed term of years, which, in the judgment of Congress, came to an end in May last, it became necessary to reenact them for a further term, with such safeguards as experience should have shown to be needful. While more precisely providing for the exclusion of new-coming Chinese laborers from our shores, in pursuance of a policy in regard to which the negotiations of immediately preceding years had shown the two Governments to be in substantial accord, the new legislation aimed to meet the case of the Chinese subjects actually residing and laboring in the United States by providing the means whereby their right to remain and enjoy the privileges of residence stipulated in the existing treaties should be confirmed to them by an orderly scheme of individual identification and certification. The statute as completely aims to protect the persons and rights of all Chinese persons entitled to residential privileges as it does to prevent their fraudulent enjoyment by those not entitled thereto.

You are pleased to state that the proceedings which led to this legislation itself were not required by any existing emergency that had arisen between the two nations, but in this you overlook the circumstance that the theretofore existing temporary legislation under the old treaties, was about to terminate by its own time limitation, as also the fact that the abrupt failure of the negotiations for a fuller international accord on the general subject had not only devolved upon the Congress of the United States the necessity for dealing with the matter by the municipal resorts pertaining to sovereignty, but had moreover aroused an unfortunate belief that the attitude of China was obstructive and the claims of China unreasonable. That this belief is without solid foundation I am happy to assume; that it did exist and under the circumstances with good show of reason, must be frankly admitted.

Much of the argument in the preceding notes of your legation, to which you refer and which you incorporate in your present notes, rests upon the assumed claim that the status of Chinese subjects with respect to the body politic of the United States is on the same footing as that of all other aliens of whatever nationality. Neither in the light of international reciprocity nor in that of municipal sovereignty can these assumptions hold good. The restrictions upon foreigners in China are special and onerous, as to vocation, residence, and travel, and are based on the natural barriers which seem to forbid the assimilation of the foreign element with the native Chinese race. This condition of immiscibility is likewise as forcibly present in the case of Chinese in the United States as it is generally absent in regard to aliens of the same race and blood as our own. It is the inherent prerogative of sovereignty to take cognizance of such incompatibilities and to provide special conditions for the toleration of the unassimilable element in the national community. China's treatment of foreigners can only be justified on such grounds. Moreover, this sovereign right is freely exercised by the United States in the adoption of restrictive or discriminatory legislation in regard to any classes of alien immigration whenever the exigencies of the public interests demand and to whatever extent may be requisite.

As I have said, the recent reenactment of the former statutes regarding Chinese persons was accompanied by provisions looking to the formal assurance to the individual Chinaman, lawfully resident in the United States, of liberty of residence and pursuits equally with the

citizen of this country, and this, too, without hindrance of the right to establish himself where and how he will in any part of the land. The provisions of this legislation are practically designed to secure to such Chinamen privileges and a measure of individual freedom far beyond those accorded to American citizens in China, both in degree and in the number of those who possess them. While differing in detail they are believed to be, in the main, no less easy of fulfillment than the conditions imposed in nearly every country of the European continent for the civil registry of the inhabitants thereof. You allege the hardship and the unconstitutionality of this legislation. I am unprepared to admit the charge of hardship until the practical application of its provisions shall have demonstrated it by positive proof.

It is regrettable that the attitude of the Chinese themselves appears to be as much one of defiance of the provisions of the statute as that of your Government is of protest against it in advance of a fair trial of its workings.

As for the charge of unconstitutionality brought against the penal provisions of the act in question, that is a matter to be determined, as you are doubtless aware, only by the judicial branch of the Government, which is as freely open to the Chinese subject as to the citizen of the United States. It is the duty of the Executive to enforce the law, and no executive power exists to evade or repeal it.

The province of the executive branch in this discussion is to bring about a better understanding of the matter and to reach a good accord as to the principles involved. Such an accord should not be far to seek. As you say in your note of the 7th November: "It is conceded that the Imperial Government has not encouraged the emigration of its people from China to the United States, but, on the contrary, in the negotiations between the countries on the subject, it has in the most friendly manner yielded to the suspension of emigration." It is perhaps unfortunate that the tangible expression of this friendly disposition went no further than the negotiations which preceded the collapse of the treaty signed in 1888. I see no reason why a better understanding may not be brought about whereby the position of China shall be rather one of amicable concurrence toward a rational and practical end than one of obstruction to the working of measures the adoption of which has been in a large degree forced upon the legislative power of the United States by the conduct of the Chinese people in this country and by the attitude of the Imperial Government in their regard.

Accept, etc.,

WILLIAM F. WHARTON,
Acting Secretary.



